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Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 11

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO.

No. 12

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

UNION TRUST CO. AND ILLINOIS STATE TRUST CO., AS TRUSTEES, ET AL.

No. 13

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

ISRAEL A. ABRAMS, ET AL.

No. 14

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

H. C. ORTON, ET AL., ETC.

No. 15

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

GUARANTY TRUST CO. OF NEW YORK, ET AL., ETC.

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PETITIONS FOR CERTIORARI FILED: JANUARY 17, 1942. FEBRUARY 28, 1942.

CERTIORARI GRANTED JUNE 8, 1942.

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vs.

CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., ET AL.

No. 17

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vs.

UNITED STATES TRUST CO. OF NEW YORK, AS TRUSTEE, ETC.

No. 18

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

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No. 19

GROUP OF INSTITUTIONAL INVESTORS AND MUTUAL SAVINGS BANK GROUP, PETITIONERS,

vs.

E. STANLEY GLINES, ET AL., ETC.

No. 32

RECONSTRUCTION FINANCE CORPORATION, PETITIONER,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.

[redacted]

No. 75-883

In the Matter of

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No.

IN THE MATTER OF

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Debtor.

GROUP OF INSTITUTIONAL INVESTORS, AND MUTUAL SAVINGS BANK GROUP,

Petitioners,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

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7610—UNION TRUST CO. and ILLINOIS STATE TRUST CO., as Trustees, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7611—ISRAEL A. ABRAMS, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7612—H. C. ORTON, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7613—GUARANTY TRUST CO. OF NEW YORK, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7614—CHICAGO, TERRE HAUTE & SOUTHEASTERN RY. CO., Income Mortgage Bondholders' Committee, et al., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7615—UNITED STATES TRUST CO. OF NEW YORK, as Trustee, etc., Appellant v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

7616—TRUSTEES OF PRINCETON UNIVERSITY, et al., etc., Appellants v. GROUP OF INSTITUTIONAL INVESTORS, etc., et al., Appellees.

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WILLIAM W. WAKEFIELD, testified further as follows:

Direct Examination.

Q. (By Mr. Orschel.) What is your name, please, sir?
A. William W. Wakefield.
Q. You have previously testified in this hearing on February 1st to 4th on behalf of the protective committee representing the preferred stockholders of the Chicago, Milwaukee & St. Paul Railroad, have you not?
A. Yes.
Q. Have you and the preferred stockholders com-
5287 mittee made any further study of the plan of reorganization submitted by the Institutional Group?
A. Yes.
Q. What has been the nature of your study?
A. We have made a further study of the plan filed by the Institutional Group and have analyzed the testimony which was presented by that group at the hearing in support of their plan.

Particularly have we tried to ascertain whether or not the institutional investors committee, in making its proposal, has given proper consideration to and a thorough analysis of all of the angles in connection with this or any other plan to reorganize this carrier.

Q. Does the testimony of the institutional group indicate to you that they have taken all factors into consideration before arriving at a plan of reorganization? That is, have they considered every possible circumstance that might in the reasonable future operate to the benefit of this carrier?

A. No. It is apparent that they have not considered either in their plan, nor does their testimony show, that they have gone much further than merely making a calculation or prophecy of future earnings, and in making such a
5288 prophecy it is apparent that they have depended exclusively upon past operations for their opinions, in other words, using past earnings only. To project the future they have totally ignored the fact that this carrier is operating a changing business; that conditions under which they have operated in the past are not identical with the methods which they anticipate employing in the future.

It seems apparent that if earnings only are used as a criterion of value upon which this reorganization is based, and in view of the fact that the contention must be that their plan will be financially sound over a long time future operation, then it would be necessary in projecting earnings for such purpose to consider more than just the past few depression years in any calculation to be used in estimating the future.

I desire to point out that even if we were to accept the estimated earnings given in the plan and were to take the present rate of earnings experienced by this carrier as a measure of accuracy, it would be difficult to sustain the claim that the proposed plan, even with its reduced fixed interest obligation, is sound.

In other words, there is no cushion of earnings today at the rate this carrier is earning between the annual fixed interest requirements as proposed and the estimated
5289 rate of earnings that has been used in the plan as an "average normal year."

If this is true, then we cannot understand how new securities can be sold under this plan without any more of an earning showing than the present trend indicates that the new securities would have, and we point out, too, that at the very date that the proposers of this plan were arguing for it, the carriers had already experienced a month or two at least of such decreased earnings, so that on the face of it, their estimate of future earnings could be criticized as wrong in the light of the earnings experienced right at that time by the carrier.

I do not wish to argue that this carrier is not capable of larger earnings in the future. We simply contend that the method of projecting earnings is not safe and does not make use of all of the elements that influence further earnings.

Further, I would point out, too, that failure to recognize physical value in establishing a new capital set-up is unfair to this carrier and its junior security holders.

Mr. Walker testified that he did not give any consideration to physical value above the principal amount of the securities that he proposed as a permanent capitali-
5290 zation.

If it can be sustained, I believe, that the difference in valuation, that is, the difference between fair physical

value, and the value predicated upon earnings only, represents in this case the road's ability to handle increased business without the aid of increased capital.

In other words, this difference in values represents useful equipment which can be dedicated to the handling of increased business.

If that were not true, then it would be apparent without doubt that when this road would receive an increased tonnage, it would have to immediately secure new capital in order to handle it.

However, one of the most important features which we find has not been considered by the promoters of this plan is the opportunity to affect the future earnings of the carrier favorably by making use of every opportunity for coordination with other roads.

Pursuit of this question of coordination will, in the opinion of the preferred stockholders committee, definitely lead such an investigation into a study of the opportunity for actual consolidation with other carriers, and no analysis
of this carrier's position in the line of present day
5291 trend will be complete until a thorough coordination and consolidation study has been made.

Benefits from coordination are not limited to a simple saving of operating expenses, but just as important is the opportunity to effect income by traffic exchanges and pooling agreements.

Q. Have you made a study of the possible coordinations and consolidations?

A. Yes. I have studied the situation so far as time will permit it, particularly that of coordination, because it is apparent that this type of benefit should be fully studied before there can be any comprehensive study made on the question of consolidation, and certainly both questions of coordination and consolidation should be fully explored before there could be any real answer concerning what the proper reorganization of this carrier should be.

Q. In the study of coordinations and consolidations what other road do you think is best adapted to the problem of this carrier in effecting coordinations or any actual consolidation?

A. The Chicago & North Western. We find possibilities of coordination with the Chicago, Rock Island & Pacific,

Chicago & Great Western, Soo Line, Northern Pacific and Great Northern Railroads.

5292 Q. Have you had the opportunity to consider the advisability of coordinations with all of these carriers?

A. No. There has not been sufficient time to completely study all of these situations, so that I have confined myself to simply a partial study of the opportunity for coordination that exists between this carrier and the Chicago & North Western because, in my opinion, that offers the greatest field for effective coordination.

In connection with these two roads I have spent considerable time consulting with the officials of both on the proposed coordinations, and the items I have been able to settle upon are within the knowledge of officials of both of these roads. The money estimates are my own calculations.

Q. Will you describe the nature of your work and some of the coordinations you have in mind?

A. In behalf of the committee for the preferred stockholders of the Debtor, and jointly with the protective committee representing the common stockholders of the Chicago & North Western, I commenced to study the possibilities of coordination and consolidation and have been conducting the same since the adjournment of this hearing on February 4th.

In order to more clearly demonstrate the coordina-
5293 tions which I have in mind, I should first like to introduce as evidence a map showing these two railroads and which I have used as a basis of suggesting coordinations.

Mr. Wakefield: I would like to have this identified as Exhibit 207. I believe I have sufficient copies, Your Honor, of all these exhibits which we propose to introduce, but I would like to distribute them after we put them in, in order to save a little time.

Director Sweet: If you have sufficient copies, we would like to have one for here.

Mr. Orschel: Surely.

(Exhibit No. 207, Witness Wakefield, was marked for identification.)

The Witness: The lines of the North Western and its leased lines, Chicago, St. Paul, Minneapolis & Omaha Rail-

roads are shown in green, and the lines and leased lines of the Chicago, Milwaukee, St. Paul & Pacific Railroad are shown in red in the entire area served by these two railroads.

Other railroads in the same area are shown by a fine black line. My studies followed three lines of coordinations that would result in savings:

The first is the abandonment of parallel lines with contemplated joint use of the remaining line—designated
5294 as coordination abandonments. These are designated by the letters a to q inclusive, and are shown on the map.

The second is a summary of station and terminal coordinations that were listed and considered in this preliminary study, consisting of 219 individual coordinations, of which 78 directly affect the Chicago & North Western and the Milwaukee Railroads.

The station and terminal coordinations are designated by the numbers 1 to 78, inclusive, on the map.

And third, other consolidation features consisting of traffic diversion, passenger pooling, freight pooling and coordination of shop facilities.

These are not shown or designated on the map.

Q. Will you explain to the Commission the nature and the results of your studies in connection with your so-called coordination abandonments?

A. I have prepared an exhibit showing seventeen projects and the preliminary estimate of savings of maintenance of way expense, station service expense and transportation expense on each of these projects.

Mr. Orschel: I would like to have this identified as Exhibit No. 208.

Director Sweet: It will be so marked.

(Exhibit No. 208, Witness Wakefield, was marked
5295 for identification.)

Q. (By Mr. Orschel.) Proceed, Mr. Wakefield.

A. No field survey or traffic study was made to determine the exact limits of these abandonments or the actual amount of expense that would be saved.

However, personal knowledge combined with discussion with both Milwaukee & North Western officials has resulted in the brief description of each of these projects, stating abandonment of rail service in the villages and towns along

each line together with their population and a proposed change in transportation to provide freight service to those towns.

The amount of savings was calculated on an average per mile cost of maintenance of way on a number of abandonments in the same area on the Milwaukee Railroad.

Director Sweet: Are these estimates of savings annual savings?

The Witness: Annual; yes, sir.

Mr. Orschel: That will be covered, Your Honor.

The Witness: Station service was taken on an average of savings on closed stations in 1936 and 1937 on the Milwaukee. An investigation of the report made by the Reconstruction Finance Corporation on the Milwaukee Railroad disclosed estimates of costs and main-
5296 tenance of way on both branch and main lines and an average cost of station service, which provided a check on my estimate.

Savings in transportation were estimated on train miles in the present service at average costs per train mile taken from company records and checked by costs shown by the Reconstruction Finance Corporation in their respect.

Q. What is your estimate of the savings from this so-called coordination abandonments?

A. The total as shown on the exhibit amounts to $1,769,750 as an annual saving, exclusive of taxes, maintenance of equipment and a reduction in equipment required.

Q. Mr. Wakefield, in connection with the suggested coordination abandonments, have you considered the interest of the public generally in making these recommendations?

A. Yes. In considering these coordination abandonments, service of other railroads and truck service would be available.

Q. Will you make similar explanation with respect to your suggestions on station and terminal coordinations?

A. A list of possible joint service in towns served by the Milwaukee and others was made. I have pre-
5297 pared an exhibit of these locations, called a Summary of Station and Terminal Coordinations, and consisting of joint facilities of the Milwaukee and North Western, the Milwaukee and North Western and others, and the Milwaukee and other exclusive of the North Western, and

as shown, two lists of possible joint facilities on the west line of the Milwaukee with other railroads, inclusive of the North Western.

Mr. Orschel: I would like to have this identified as Exhibit 209.

Director Sweet: It will be so marked.

(Exhibit No. 209, Witness Wakefield, was marked for identification.)

Q. (By Mr. Orschel.) Will you be good enough to continue?

A. These are designated as items a to h, inclusive, and consist of 219 towns. Savings were estimated on an average basis of savings on closing of individual stations or from estimates made by the management in the years 1934 to 1936, which in each case showed the total estimated annual savings at each location. The total estimated saving with the use of joint facilities is estimated at $1,000,816, exclusive of taxes.

Q. What further studies have you made in connection with the possible economies of coordinations?

5298 A. Other consolidation features considered were traffic diversion, passenger and freight poolings and coordination of shop facilities. These are reflected in an exhibit which I have prepared.

Mr. Orschel: This is our last exhibit, which I ask to have identified as Exhibit No. 210?

Director Sweet: It will be so marked.

(Exhibit No. 210, Witness Wakefield, was marked for identification.)

Q. (By Mr. Orschel.) Will you be good enough to discuss this exhibit, Mr. Wakefield?

A. In connection with the coordination or consolidation of the Chicago & North Western Railroad and the Milwaukee Railroad, preliminary figures were obtained on the 1937 volume of traffic at Chicago and at St. Paul and Minneapolis, and an estimate was made of the diversion of traffic now handled by the Milwaukee Railroad by traffic rights on the Union Pacific Railroad between St. Paul and Duluth of the handling of this same traffic over the line of the Omaha Railroad between St. Paul and Duluth.

Other traffic diversions or poolings or coordinations of shop facilities were not estimated, but the savings on these three projects, as shown in items a, b and c in the

5299 exhibit, amount to at least $879,000 per year.

The items not estimated, as noted on the exhibit,

consisting of traffic diversion between Fulton Junction and Racine, Council Bluffs and Sioux City, the passenger pooling operations from Chicago to Green Bay, Twin Cities, Omaha and Milwaukee, with freight pooling between Chicago and Green Bay, Twin Cities and Omaha, present the largest fields for savings, but will require an extensive study to determine the exact amount.

Another feature of large savings, in my opinion, is the coordination of shop facilities. No effort was made to estimate these poolings or shop facilities coordinations, due to the insufficient amount of time available.

Q. In your opinion, then, the coordinations that you have listed only represent a small part of the possible savings to be effected, which can be determined by a more detailed study of the entire situation?

A. Yes, sir. The total estimated saving from the projects considered and studied amounted to $3,649,566 and are, in my opinion, only the minor projects, affecting savings in coordinations.

The other transportation changes proposed will, in my opinion, produce savings several times this amount.

5300 Q. In your opinion, would the actual consolidation of these roads permit taking advantage of additional savings not to be experienced by coordinations only?

A. Coordinations are only part of the problem. Consolidation of the two carriers is a question in keeping with the changing times, and, as a matter of fact, in keeping with up-to-the-minute public discussions of railroad problems.

I cannot see any real, physical or financial reason why it could not be accomplished. True, a good deal of public expression has been to the effect that the protests of labor, the objections of local communities affected have proved to be insurmountable barriers.

It must be borne in mind, however, that no real consolidated effort on the part of management, labor or government has been available to date to compose these differences.

For instance, the dismissal wage agreement of May 12, 1936, should be a step to aid in the solution of the former problem.

Until such an effort has been made there can be no answer as to the possibility. It is obvious, however, that the possibilities are vast and certainly sufficiently impor-

5301 tant to permit adequate exploitation of the subject.

Equally true is the belief of the protective committees for the preferred stock of the Milwaukee and for the common stock of the North Western that until this question is given the same consideration as any argument for a solution of the carriers' difficulty no plan of reorganization looking towards a final disposition of the question without irreparable damage to the equity owners can be decided upon.

Mr. Orschel: If Your Honor please, I would like to make a statement that this testimony has been prepared in connection with the petition which has been filed, copies of which have been served on all of the parties, of the preferred stockholders, for a postponement of this hearing.

I should like to state that the protective committee for the common stockholders of the North Western have also filed a similar petition in the North Western proceeding.

As a matter of fact, Mr. Kohlsat and Mr. Wyatt, counsel for the North Western common stockholders committee, are in court.

We hope by this testimony to show to your Honors the possibilities of effecting a substantial saving through the consolidation or, rather, the coordinations which have
5302 been suggested by Mr. Wakefield.

As has probably been noted in the public press, and which we are informed, the Reconstruction Finance Corporation is presently making a study of the possibilities of coordination between the North Western and the Milwaukee.

We have no direct information in connection therewith, but we understand that that study will probably extend well during the summer.

We have no arrangement of any kind with the Reconstruction Finance Corporation, but we certainly trust when that study is completed, it will be made available for further examination by our committee and others interested in a similar study.

In the light of the testimony that has gone in, particularly the testimony of Mr. Scandrett this morning I feel more than confident in the position that the preferred stockholders have taken in requesting that this matter be postponed at this time.

I do not feel that there is any necessity of expanding further the contents of our petition and the statements made by Mr. Wakefield in his testimony. I believe that it ex-

presses, as well as we possibly could now, our arguments in favor of such a postponement.

5303 I think by reason of the fact that the management of this railroad is in such competent hands;—and at the last hearing our committee took the initiative in attempting to show that, it will justify any further continuance of the consideration of this plan until this consolidation study can be made.

Added to this, as set forth in the petition and as evidenced by Mr. Scandrett's testimony the conditions have so materially altered since the filing even of the Institutional Group plan, that we feel in fairness to all parties, particularly to the stockholders, that this matter should be deferred until a little clearer view of the picture can be obtained.

We particularly call attention to this at the present time by reason of the fact that the public press carries so many details of the possibility of a further study into the railroad situation, and we sincerely believe and earnestly request that this matter should be continued so that the interests of the stockholders, particularly those of the preferred stockholders whom we represent, will not be cut out by a forcing through of a plan at the present time.

Director Sweet: Mr. Orschel, without going into the question of the desirability of making studies of the kind you suggest, regarding consolidations and coordina-

5304 tions and things of that sort, have you formed any estimate of the approximate time when it would be possible to complete the reorganization of the Milwaukee and the Northwestern?

Mr. Orschel: The question of time?

Director Sweet: The question of the possible time when it would be possible to complete the reorganization of these carriers, if investment studies, such as you are suggesting here, are undertaken, could be carried through?

Mr. Orschel: The study would take a minimum of six months, possibly longer. The completion of a program, if it should be found to be feasible, I should imagine would not take less than a year. That may be even an optimistic guess; that is all it can be; because we have had limited facilities with which to study the thing and to go into it.

The picture has not been opened up to us, but we simply feel as the result of the investigation which Mr. Wakefield has made that the problem is one that is not as great as we first anticipated.

For instance, we felt to begin with that these abandonments, these coordinations of abandonments that we were going to have to suggest, would effect a great part of the public generally.

5305 Mr. Wakefield has made a computation, which appears on the exhibits, that shows individual abandonments that will produce, as we believe, a saving of $1,700,000 annually, exclusive of taxes. Only 43,000 people in these little towns along the line would be affected.

Now, we had always anticipated that there might be difficulties from the abandonment of those lines. With only 43,000 affected and the possibility of further coordinations of that kind, or, of abandonments not being any greater than that, we do not think the problem is nearly as serious as we had at first anticipated.

Now, all of those things have been considered by us. We admit frankly we do not know just what it will involve because, as I say, we have not had the time nor facilities to do it.

Director Sweet: Have you ever had occasion to listen to what 43,000 people can say in abandonment cases?

Mr. Orschel: No, I have not. I agree with that, Your Honor, that is perfectly true, but the whole point is the question of consolidation and coordination, which is now thoroughly being discussed.

We should like to have the opportunity to see this discussion materialize in something definite.

5306 If it should turn out that nothing can be done, then we have made our efforts. We are trying to protect these stockholders as best we can.

We feel the results of Mr. Wakefield's study definitely show that substantial savings can be made, and, therefore, until some better effort than we have made—we do not hold this out as being exhaustive or final or anything else, but until some better effort has been made, we want the time in which that consideration can be given.

As I say, anything that I would tell you as to how long it would take, is only a guess. I should say that the studies at least can be completed within a year.

Director Sweet: Any further questions of Mr. Wakefield?

Mr. Burgess: I have a question or two.

Cross-Examination.

Q. (By Mr. Burgess.) As I understand it, these studies that you have made lead you to the conclusion that $3,600,000 annually could be saved to the Milwaukee railroad by these consolidations, or is that saving for both of them?

A. That would be the estimated saving to both railroads.

Q. To both roads. And, of that $3,600,000 how much of it would represent a reduction in payroll of those
5307 two railroads?

A. The only answer I can give to that, Mr. Burgess, is that with any railroad that the payrolls are running about 45 per cent of operating expenses. This might be a little in excess of the 45 per cent as being productional labor.

Q. Now, it has been estimated—maybe you have seen the figures, undoubtedly, at least I have,—that the savings through the medium of consolidation and coordination, or 70 per cent of those savings, would represent reductions in payroll, while 30 per cent would represent savings through other media, that is, through capital expense and materials and supplies and what not.

Would that correspond to your judgment in respect to this $3,600,000 that some such figure as that should obtain?

A. Very possibly it would reach that high. I don't know exactly because I did not attempt to segregate it.

Q. Now, in estimating this $3,600,000 as constituting savings to these two roads, and assuming that the reduction in payroll would amount to 45 per cent or 60 per cent or 70 per cent, as the case might be, of that total, have you made any allowance in here in respect to costs to these railroads through the dismissal wage or through some
5308 other medium of taking care of the dismissed employees?

A. The dismissal wage agreement would possibly defer the savings for from one to three years; I believe three years is the limit, and it would mean simply deferring the initiating of the savings, is all.

Q. You have not made any estimate of that?

A. No, I have not.

Q. Nor have you assumed any other burden that might obtain by reason of that?

A. No. This is still a preliminary estimate. This rep-

resents 1096 miles. There has been no survey, no traffic survey, no checking up, no determining the ton-miles to be handled or anything like that. It simply is an estimate made of possible savings by an average method only.

Q. Now, these 43,000 people that Mr. Orschel spoke about, I understood that was people that would be affected by these station and terminal consolidations, was it?

A. No, by the coordination abandonments; that is, in the 78 towns of a population of 100 or more, totaling that population, for example, shown on the exhibit.

Q. How many of those were employees, of those 43,000?

A. I imagine very, very few, because they are intermediate stations only.

5309 Q. You did not take into account employees in those 43,000 people?

A. No.

Q. When you said 43,000 people were to be affected, you were taking the population of the towns?

A. Yes, sir; the shipping public.

Mr. Burgess: I may have some further questions of Mr. Wakefield this afternoon, Mr. Director, after I have had an opportunity to look through these exhibits which I have no opportunity to do now. I do not think I will, but if I should, I would like to reserve the right to ask him further questions at that time.

Mr. Orschel: Mr. Wakefield will be available.

Director Sweet: Any others wish to question Mr. Wakefield at this time?

Mr. Pantaleoni: What would be the effect on the lines west of Mowbridge on account of the consolidation of the North Western and the Milwaukee lines such as you propose?

A. In the exhibit of traffic diversion, you will find the diversion of traffic at St. Paul and Minneapolis from the Great Northern, Soo Line, and Northern Pacific to the Milwaukee, which would affect the west coast lines.

5310 Mr. Pantaleoni: What exhibit is that?

The Witness: Exhibit B.

Mr. Pantaleoni: I see. That is all.

Director Sweet: Any other questions?

(No response.)

Director Sweet: You may stand aside.

(Witness excused.)

Mr. Marsh: May I put Mr. Richardson on?

LAWRENCE RICHARDSON was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Marsh.) Mr. Richardson, will you please state your name and your present business position?

A. Lawrence Richardson, mechanical assistant to the vice president and general manager of the Boston & Maine Railroad. My duties cover general operating problems and supervision of design, construction and maintenance of all equipment.

Q. Will you please state your previous railroad experience and your qualifications as an expert in railroad matters.

A. During attendance at and after graduation from Cornell University with the degree of M. E. in 1910 I was employed by the Pennsylvania Railroad for ten years, 5311 during which period I served at different times in the mechanical, maintenance of way and operating departments. This included work in the shops, engine houses, engineering offices, roadway and yard work, and road work in connection with freight, passenger and switching operations.

In 1919 and 1920 I was employed by the United States Railroad Administration as supervisor of equipment in consideration of problems relating to the supply and distribution of equipment and later as Examiner in the consideration and settlement of claims against the Administration by numerous railroads.

In this connection I had occasion to familiarize myself with the operations of railroads in various parts of the country, including the following:

Northern Pacific, Southern, Mobile & Ohio, Erie, Chesapeake & Ohio, Norfolk & Western, Pittsburgh & Lake Erie, Chicago & Eastern Illinois, Pittsburgh & West Virginia, Seaboard Air Line.

The settlement of claims involved consideration of various problems relating to valuation, operation, maintenance of way and equipment and in some instances involved consideration of coordinated operation of lines of two or more carriers.

In 1926 I was employed by the Boston & Maine Railroad

and the problems I have considered for them have
5312 included the revision and reconstruction of terminals in the Boston terminal area and particularly the development of the North Station in that city.

I have been connected with the Boston & Maine continuously since that time and have at different periods served in the following capacities: assistant to president, chief mechanical officer and mechanical assistant to vice president and general manager.

In 1936 I was employed by the Reconstruction Finance Corporation to prepare a special study of the operating and maintenance problems of the Denver & Rio Grande Western system and prepared a report for them containing recommendations as to improvement of service, economies obtainable and also covered consideration of a program of capital expenditures proposed by the management of the road.

In 1937 I was employed by the trustee of the New York, Susquehanna & Western Railroad Company, a subsidiary of the Erie Railroad, to make a full report on the contractual relations with the Erie and other roads and on the operations and physical condition of that road.

I have recently completed that report, and a number of my recommendations are being acted upon by the trustee, including a proposal for unifying terminal
5313 operations.

I am now engaged in a similar study of the New Jersey and New York Railroad Company, another subsidiary of the Erie Railroad, involving an extremely complicated set-up in the congested terminal area west of the Hudson River.

In 1928 I developed and placed in effect one of the earliest plans for the joint operation of locomotives. This was on the lines of the Boston & Maine and Central Vermont Railroads between Springfield, Massachusetts, and White River Junction, Vermont.

Locomotives of one carrier were used on the through run for half of each year and the operating crew were changed in each instance at East Northfield, Vermont.

The principles established in that operation have now been extended to other runs of the Boston & Maine and other lines.

I also supervised the establishment of coordinated terminal operations at Springfield, Worcester, Fitchburg and

Lowell, Massachusetts, and other points on the Boston & Maine.

Under these arrangements all mechanical work on locomotives was concentrated in a single engine house, yard operations were unified under a single management and l.c.l. freight operations were concentrated into a single
5314 station, at each terminal.

Q. You have been employed, have you not, by City Bank Farmers Trust Company, as trustee under the first mortgage and consolidated mortgage respectively of Milwaukee & Northern Railroad, to make a survey of the Milwaukee & Northern, and their operations and earnings?

A. Yes, sir.

Q. Will you please state in general the nature of your examination?

A. I first examined the plans of reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company to which I shall refer as the St. Paul, proposed by the Debtor and by the Insurance Group Committee in these proceedings, and also examined the portions of the transcript of hearings before this Commission and the exhibits introduced at those hearings which related to the Milwaukee & Northern and its operations.

I discussed these matters with representatives of the City Bank Farmers Trust Company and then consulted the general counsel, chief statistician, general manager and other officials of the St. Paul trustees who arranged for me to make a physical inspection of all of the Milwaukee & Northern lines.

I made two trips over these lines in an automobile
5315 inspection car and carefully examined the condition of the right of way, station buildings, yards, shops and other facilities of the line and discussed the problems of operation with the superintendent of the Superior Division of the St. Paul, under whose jurisdiction these lines are operated; also the general foreman of the Green Bay shops and other operating officials.

I also inspected the locomotives and freight and passenger and other equipment in use on the Milwaukee & Northern lines.

I then made a study of the territory served by the Milwaukee & Northern, including the population of the various communities served, the industries served, the traffic originated in the territory and the movement of traffic in the territory.

I also made a study of the possibilities of coordinated service between the Milwaukee & Northern and other lines in the territory.

I made a very careful review of the exhibits introduced in evidence at previous hearings on the subject of the segregation of the earnings and expenses of the Milwaukee & Northern lines from those of the balance of the St. Paul system. I will refer to these in more detail later.

Mr. Marsh: At this time I would like to identify 5316 our exhibits. The map will be Exhibit 211.

The next exhibit, 212, is headed "Milwaukee & Northern Railroad, bridge rating, 1938."

The next exhibit, 213, is headed "Milwaukee & Northern Railroad ticket and coupon receipts, March 1936."

Exhibit 214 is headed "Milwaukee & Northern Railroad inventory of machine tools at Green Bay shops, 1938."

Q. Will you describe briefly the Milwaukee & Northern line and its equipment and shop facilities?

A. Referring to I. C. C. Exhibit 211 it will be seen that the Milwaukee & Northern extends northward from North Milwaukee, Wisconsin, through Green Bay Junction, Crivitz and Channing, to Champion, Michigan, and from Channing, by what is in effect a branch line, to Ontonagon, Michigan, on Lake Superior.

(Exhibit No. 211, Witness Richardson, marked for identification.)

The Witness: There are branches from Hilbert to Neenah-Menasha and Appleton, from Green Bay Junction to Green Bay and from Crivitz to Menominee-Marinette.

A branch previously operated between Stiles Junction and Oconto has been abandoned, operation being conducted over Chicago & North Western tracks between
5317 these points under a trackage agreement.

The mileage between Neenah-Menasha and Hilbert is jointly owned with the Minneapolis, St. Paul and Sault Ste. Marie (The Soo Line) and a portion, 0.54 miles, of this mileage is subject to the lien of a Soo Line mortgage.

It would be feasible to construct an additional track on this right of way if necessary to secure entrance into Neenah.

As indicated in I. C. C. Exhibit 156, the Milwaukee & Northern lines south of Green Bay are subject to the prior liens of the M. & N. first mortgage and subject to the second lien of the consolidated mortgage, and the lines

north of Green Bay are subject to the first lien of the consolidated mortgage.

The mileage subject to the first mortgage is 125.74 miles and the mileage under the first lien of the consolidated mortgage is 266.56 miles.

The rail on the main line is 75, 85 and 90 pounds per yard and the 75 and 85 pound rail is gradually being replaced by 90 pound rail. The line is 60 per cent tie plated.

The ties are in good condition. 90 per cent are treated ties, the bulk of them by the zinc chloride process.

5318 All except 50 miles of the main line is gravel ballasted.

The bridges are classified on I. C. C. Exhibit 212. Those on the main line and the line from Channing to Ontonagon comply with Cooper's rating E-50 which is the usual standard in this territory.

(Exhibit No. 212, Witness Richardson, was marked for identification.)

The Witness: The bridges on the Menominee and Appleton branches of Cooper's scale are rates E-37. In my opinion it would not be prudent at the present time to incur the cost of making the improvements necessary to raise these branch lines bridges from the E-37 to the E-50 standard in view of their present use and their prospective reduction in status in the event of coordination.

In general the right of way is adequate to handle the present traffic with the type of equipment in use and the type of service rendered.

The station buildings are in satisfactory condition except that there is a general need for painting. The only equipment identified as specifically subject to the Milwaukee & Northern mortgages consists of ten cabooses, eleven work train cars, one passenger and baggage car, and one business car.

5319 In addition there have been assigned to use on the Milwaukee & Northern line 41 locomotives, approximately 1000 freight cars and 32 passenger train cars. The locomotives are of secondary classifications, as indicated on I. C. C. Exhibit 206. They are from 16 to 34 years old.

The tractive efforts run from 28,158 pounds to 54,723 pounds.

The freight cars assigned to the Milwaukee & Northern lines by the St. Paul consist largely of flat cars used for the handling of logs and lumber. They are in fair condi-

tion, though some of them are equipped with arch-bar trucks and would not be suitable for use in interchange.

I am advised that the freight cars included in the assigned equipment upon which the rental charges for system equipment in I. C. C. Exhibits 141 and 156 were based consisted of 186 box cars, 93 coal cars, 46 stock cars and 697 flat cars.

Q. That appears in Exhibit No. 206 also, does it not?

A. Yes, sir.

The 32 assigned passenger cars are standard equipment except that the coaches used in the principal trains are of the new air conditioned type.

The shop facilities of the Milwaukee & Northern
5320 are located at Green Bay, Wisconsin. These shops handle all freight car and locomotive repairs between general shoppings.

In the past these shops handled all shop requirements of the Milwaukee & Northern and could again handle the general repairs on locomotives and cars if necessary.

At present such general repairs have been concentrated at Milwaukee shops of the St. Paul, for purposes of economy.

Many smaller roads handle general repairs to equipment with facilities no better than those now installed at the Green Bay shops. This equipment is described in I. C. C. Exhibit No. 214.

(Exhibit No. 214, Witness Richardson, was marked for identification.)

The Witness: That was brought out in Mr. Oliphant's exhibits previously submitted.

Should it become desirable to handle general repairs of the Milwaukee & Northern equipment at Green Bay, I would recommend expenditures on the shop of approximately $85,000 for the purpose of securing economies. The betterments recommended would include a drop pit, wheel lathe, crane and certain smaller machines.

5321 Q. Will you please state the results of your investigation of the freight traffic of the Milwaukee & Northern?

A. I. C. C. Exhibit No. 80 contains a description of carload traffic handled on the Milwaukee & Northern lines in 1933 based on an analysis of the months of December 1932 and March, June and September 1933. This indicates in general the principal commodities handled.

The line south of Green Bay traverses a splendid farming

country not subject to drought, while north of Green Bay the farming gradually diminishes and gives way to mining and forestry. As there is still a large amount of timber standing, there is practically no farming north of Channing. I will refer later to the industries served by these lines and to the population in connection with other phases of my testimony.

An analysis of a portion of the traffic for 1936 gives an idea of the local traffic on the Milwaukee & Northern. Of 871 cars moving from north of Green Bay to south of Green Bay, 124 cars were wood fuel, 262 cars wood pulp, 178 cars lumber and 307 cars miscellaneous.

Of 3846 cars moving locally on the lines north of Green Bay, 194 cars were coal, 2486 cars logs, 88 cars wood
5322 fuel, 365 cars pulp wood, 310 cars lumber, 117 cars gasoline and 286 cars miscellaneous.

On 708 cars moving locally on the lines south of Green Bay, 220 cars were sugar beets, 43 cars cheese, 137 cars coal, 68 cars sand and gravel, 85 cars gasoline and 155 cars miscellaneous.

The traffic on the Milwaukee & Northern is about equally divided between local and through traffic. In 1936 revenue from freight traffic local to the line totaled $1,263,761, while the Milwaukee & Northern share of freight revenue from through freight traffic, as computed on the 25 per cent minimum formula, totaled $1,393,221.

Q. What observations have you to make with reference to the population of the territory served by Milwaukee & Northern in its relation to passenger traffic?

A. As shown on my map, I. C. C. Exhibit No. 211, the line was built as a direct route from North Milwaukee to Green Bay and from Green Bay to Channing. There are no large towns on the line except Green Bay—De Pere as indicated in the insert on the map.

The population of the remaining towns located directly on the line are quite small. The line, therefore, is not in a position to originate substantial local passenger
5323 traffic and its principal passenger revenue is derived from through passengers using the fast through trains.

Crivitz develops a higher proportion of passenger revenue because of use of that station by passengers driving over from Marinette and Menominee to avail themselves of the fast through trains. I will refer later to the popula-

tion and passenger situation on the Chicago and North Western Lines as shown on I. C. C. Exhibit No. 211.

Q. Will you please describe the results of your review and check on the segregation of earnings and expenses attributable to the Milwaukee & Northern Lines as indicated and explained in I. C. C. Exhibits 141, 142 and 156 which were previously introduced in evidence on behalf of the Debtor?

A. I ascertained that the interline traffic divisions used in allocation of interline freight revenue as between the Milwaukee & Northern and the balance of the St. Paul system follow practices in general use in that territory. The revenues on traffic originating or terminating beyond the gateways at Chicago, at the Missouri River, Kansas City, Omaha, and at the Twin Cities, are split at those points and revenue earned beyond those points is regarded as foreign revenue even though earned by the St. Paul.

5324 Revenue earned inside those gateways was divided on a proportional mileage basis between the Milwaukee & Northern and the balance of [redacted] St. Paul System with a minimum allowance of 25 per cent to the short mileage line.

I find that this use of a 25 per cent minimum to the short mileage carrier is in line with the usual practice between foreign lines in this territory where specific divisions have not been agreed upon. It is applied as between the St. Paul and the Chicago & North Western on traffic not covered by specific divisions.

I ascertained that for local cars moving on the Milwaukee & Northern originating or terminating in Milwaukee, the Milwaukee & Northern has been charged in the segregation a switching charge of $9 per car for interstate cars and $7.50 per car for intrastate cars.

This practice is in force as between the St. Paul and the Chicago & North Western on cars interchanged in the Milwaukee area.

The switching charges at Milwaukee, due to higher expense of operation, are much higher than they are at outlying points such as Green Bay, where the switching charge is only $2.25 per car. Reciprocal switching charges in the Jersey City-Hoboken area, which I recently had

5325 occasion to study, are $6.30 per car for competitive cars and $4.50 per car for non-competitive cars. Considered from the point of view of these comparative

charges, against the Milwaukee & Northern appear to be adequate compensation for the service performed by the St. Paul in the Milwaukee terminal area.

I also made a study of the Milwaukee & Northern segregation applying from the New York, New Haven & Hartford Railroad Company formula which was recommended for approval by the Examiner in the pending New Haven Case, I. C. C. Finance Docket 10992.

This formula, while not as simple, is more exact than the 25 per cent minimum formula described in I. C. C. Exhibit 142. There the cost of terminal service is determined and translated into an equivalent number of road miles ascertained by dividing the terminal service cost by the cost of haul per road mile.

The road mileage equivalent to the cost of interchange service was similarly determined. These mileage equivalents so determined are commonly referred to as "constructive mileage."

Under the New Haven formula constructive mileage on full cars for terminal services was 109 miles and for interchange service 23 miles; for less than carload (L. C. 5326 L.) traffic the New Haven formula allowed 71 miles of constructive mileage for terminal service and 17 miles constructive mileage for interchange service.

The constructive mileage is added to the actual road haul mileage on each car and the revenue is then divided on the basis of the resulting total mileage on each line over which the car is moved.

I made a comparative study of the revenue allocation on car movements between stations amounting to ten cars or more per year involving total revenue, under the 25 per cent minimum formula, of $754,931.10.

Applying the New Haven formula I obtained a result different only by $5,285.08, in favor of the Chicago, Milwaukee, St. Paul & Pacific, a difference of only seventh-tenths of one per cent.

If this percentage were applied to the entire interline traffic of Milwaukee & Northern, the total difference would be only $9,753.93, which would reduce the total freight revenue attributed to the Milwaukee & Northern only four-tenths of one per cent.

This check supports the 25 per cent minimum formula applied in the Debtor's exhibits.

I also made a check of the actual divisions of freight

revenue between the Green Bay & Western and the Milwaukee & Northern during the year. The actual
2327 figures showed that the Green Bay & Western share averaged 51 per cent of the total. Application of the 25 per cent minimum formula described in I. C. C. Exhibit No. 142 gave the Green Bay & Western 49 per cent of the sum total revenue, which again tended to substantiate the 25 per cent minimum formula and showed that it erred, if anything, on the conservative side.

I made a special check of the item of $146,944 charged against the Milwaukee & Northern Lines as interest rental on system equipment in Exhibits 141, 142 and 156.

I understand that in the case of locomotives and freight cars this computation was based on an assumption as to the number of locomotives and system-owned freight cars in average use on the Milwaukee & Northern lines during 1936 and an assumed average depreciation of 50 per cent on such equipment.

On checking the equipment actually on the line I ascertained that both the locomotives and the freight cars had an average age substantially in excess of 50 per cent of their probable useful life. The actual age of the 41 locomotives assigned to Milwaukee & Northern is indicated in I. C. C. Exhibit No. 206.

I also ascertained that rentals for system-owned passenger cars were based on estimated purchase costs for
5328 such cars instead of actual construction costs. If the actual average age of equipment owned by or assigned to Milwaukee & Northern and the actual construction costs are used as the basis for computing this rental, the item of rental of system equipment should be reduced approximately $53,822 for the year 1936.

A further reduction of this item should, it seems to me, be made on account of the interest rate used in computing the charge, which was 5 per cent. A rental of 4 per cent of depreciated value appears to be more in line with prevailing interest rentals on equipment trusts.

Such a reduction of interest rate would reduce the rentals on system-owned equipment by the further sum of $18,155, or a total reduction of this item of $71,977.

If this correction were made in Exhibits 141 and 156, the net income available for interest on the Milwaukee & Northern bonds in 1936 would be increased $71,977.

Except in the respects mentioned, I consider that these

exhibits present a fair segregation of the revenues, expenses and net income of the Milwaukee & Northern lines for 1936 and of the net earnings of the St. Paul System,
(exclusive of Milwaukee & Northern lines) from
5329 freight traffic interchanged with the Milwaukee & Northern lines.

Director Sweet: At this point we will be in recess until 2 o'clock.

(Whereupon, at 12:30 o'clock, p. m., a recess was taken until 2 o'clock, p. m., of the same day.)

5330 Afternoon Session.

2:00 o'clock p. m.

Commissioner Porter: Will you proceed, gentlemen?

LAWRENCE RICHARDSON testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Marsh.) Exhibit No. 213 is entitled "Milwaukee and Northern Railroad, Ticket and Coupon Receipts, 1936."

A. Yes, sir.

Q. Mr. Richardson, will you kindly state whether in your opinion, except in the respects mentioned, or the exceptions mentioned in your testimony, Exhibits 141, 142 and 156, showing segregation of the revenues and expenses and net income of the Milwaukee and Northern Lines for 1936 present a fair picture of the line and of the earnings of that line?

A. I do, except in the respects mentioned, I consider that those Exhibits present a fair segregation of the revenues, expenses and net income of the Milwaukee and Northern Line for 1936 and of the net earnings of the St. Paul System inclusive of the Milwaukee and Northern Lines from freight traffic interchanged with the Milwaukee and Northern.

5331 Q. Have you made a study, and, if so, will you state the results thereof, of possible bases for operating the Milwaukee and Northern lines if severed from the St. Paul system?

A. I have made such studies and came to the conclusion that there were several practicable alternative connections for the Milwaukee and Northern which might be worked out either through lease or through operating agreements.

The three principal connections which suggest themselves are:

(1) Chicago and North Western Railway Company,

(2) Milwaukee Electric Railway and Light Company, and

(3) Minneapolis, St. Paul and Sault Ste. Marie.

A less favorable connection would be the Green Bay and Western Railroad Company.

Q. Assuming that a fair operating arrangement could be effectuated with the Chicago and Northwestern, what would be the requirements of Milwaukee and Northern in the nature of additional capital?

A. The capital requirements would include the following:

The only required physical change in the line would be
the construction of a connection between the Milwau-
5332 kee and Northern lines and those of the Chicago and
North Western just north of North Milwaukee which would cost approximately $11,000.

No new passenger or freight facilities would be required at Milwaukee as those of the Chicago and North Western would be used.

The Chicago and North Western is also in a position to supply the necessary equipment for use on the Milwaukee and Northern lines, in the event that the St. Paul equipment now assigned to the Milwaukee and Northern lines were recaptured by the St. Paul on severance.

In addition, the Milwaukee and Northern lines would require approximately $200,000 working capital, this amount being based on the usual requirement of slightly less than one month's gross revenues.

Milwaukee and Northern would also require an average of approximately $210,000 of materials and supplies which would be largely located at Green Bay.

Roads of similar size are operated today with average stocks of materials and supplies of less than $100,000, but such a small amount would involve delays in waiting for material and incidental extra costs.

Director Sweet: Do I understand you are con-
5333 sidering now the possibility of having the Milwau-

kee and Northern turned over to the Chicago and North Western?

The Witness: No, no; severed and operated either by working agreement or lease with the North Western.

Director Sweet: You would retain the existing tracks and facilities of the Milwaukee and Northern?

The Witness: Correct.

Director Sweet: And you need that in some way with the operations of the North Western?

The Witness: In this particular phase of my answer; yes.

Director Sweet: Would that not appear, at least, on the map, to indicate a pretty general duplication of facilities and paralleling of lines and things of that sort?

The Witness: It would.

Director Sweet: All right.

The Witness: This would mean that the total requirements for new capital, assuming a fair working arrangement with Chicago and Northwestern, would aggregate approximately $421,000.

Q. (By Mr. Marsh.) Assuming that a fair operating arrangement could be effected with the Soo Line,
5334 what would be the requirements of Milwaukee and Northern in the nature of additional capital?

A. There would be the same requirements as in the case of an arrangement with the Chicago and North Western for working capital and for materials and supplies, a total of $410,000.

A connection could be made through Menasha with the Soo Line. This would require some improvements and better maintenance on the branch of the Milwaukee and Northern from Hilbert to Menasha.

This arrangement would not be as advantageous as the proposed operation in connection with the Chicago and North Western since, among other things, it would mean that through service of Milwaukee and Northern lines to Chicago would pass outside of Milwaukee.

I believe that it would be possible to rent any required equipment not owned or retained by Milwaukee and Northern. There are in the mid-west numbers of spare locomotives of the types now in use on Milwaukee and Northern and there is also a surplus of freight cars, particularly flat cars of the type constituting two-thirds of the present freight equipment of Milwaukee and Northern.

The expense for rentals of equipment should not
5335 exceed the amounts charged against the Milwaukee and Northern on I. C. C. Exhibits 141, 142 and 156.

Q. You also referred to a possible connection with Milwaukee Electric Railroad Company?

A. Yes. This road parallels the Milwaukee and Northern for some distance north of North Milwaukee and there would be some inducements for both roads to work out arrangements for operating relationship. This would not be as desirable a connection for the Milwaukee and Northern as the Chicago and North Western or the Soo Line.

Q. Will you now indicate whether in your opinion operation in conjunction with the Green Bay and Western Railroad would be practicable?

A. I believe that it would.

Such operation would make available to the Milwaukee and Northern connections to the east and west that have been developed by the Green Bay and Western.

The principal difficulty with an arrangement with the Green Bay and Western would be the lack of a passenger terminal in Milwaukee and through connections to Chicago, although it seems probable that as a matter of mutual self-
interest the present through passenger service main-
5335 tained with the St. Paul could be continued.

The physical connection between the two lines would, of course, be continued at Green Bay as at present and the additional capital requirements for the Milwaukee and Northern would be substantially as outlined for the other suggested connections except in the matter of track connections, the extent of which would depend on what arrangements could be made with connecting roads at Milwaukee.

Q. Will you briefly outline your view as to whether the Milwaukee and Northern lines could be operated as a separate property without any close operating relationship with any of the lines mentioned in your previous testimony?

A. While operation in connection with one of the carriers mentioned would appear preferable, I believe that independent operation of the Milwaukee and Northern would be entirely possible.

The capital requirements would be substantially those indicated for operation in conjunction with the Chicago and North Western, except for the track connections in Milwaukee.

I believe it fair to assume that passenger service and freight interchange would continue with the St. Paul system on account of the mutual advantage derived by
5337 both lines from such service.

I believe also, as previously indicated, that Milwaukee and Northern would be able to rent the necessary equipment at a cost not exceeding the charges for equipment rental indicated in I. C. C. Exhibits 141, 142 and 156.

Under independent operation it would not seem to me necessary for the Milwaukee and Northern to acquire local freight terminal facilities in Milwaukee proper. Carload freight would be interchanged as at present and I believe that arrangements could be made for payment of switching charges thereon upon the basis of those charged under Exhibits 141, 142 and 156.

The development of pick-up and delivery service in this area has made the location of a local freight station of minor importance. Operating convenience has become of major importance and it would seem to me feasible to locate the l.c.l. terminal on the line of the Milwaukee and Northern itself, in or north of North Milwaukee.

It would appear to me sufficient for such a l.c.l. terminal to consist of not exceeding four switching tracks served
5338 by covered platforms and driveways. The cars would be unloaded directly into trucks for local delivery or into other cars for forwarding.

On the northbound movement the trucks would unload across platforms to cars. There would be practically no building space required other than for offices, as there would be no storage.

In effect, the terminal would provide for transfer with highway vehicles as well as with other freight cars.

As indicated in my previous testimony I do not believe that additional repair shop facilities would be required under independent operation in view of the available Green Bay shops. I would recommend expenditures of some $85,000 on these shops for the purposes indicated in order to make them economical for general repairs.

Director Sweet: Mr. Richardson, have you considered this question:

If the Milwaukee and Northern were now an independent line, being operated independently, what would be the best of the associations it could make with any of the lines in that vicinity?

The Witness: With the Milwaukee.

Director Sweet: That is the connection that exists at the present time?

5339 The Witness: Yes, sir.

Director Sweet: All right.

Q. (By Mr. Marsh.) Have your studies indicated that there are practical means of increasing the net income of the Milwaukee and Northern lines if the present ownership by the St. Paul is continued?

A. Yes. I believe that the net income of these lines can be substantially increased by coordination of their operation with the northern lines of Chicago and North Western Railway Company indicated on my map, I. C. C. Exhibit No. 211, that is, the Chicago and North Western lines running north from Milwaukee through Sheboygan, Manitowoc, Green Bay, Oconto, Marinette, Menominee to Powers and Escanaba and thence connecting with Iron Mountain, also its line from Milwaukee through Fond du Lac, Neenah, Menasha and Appleton to Green Bay and certain branch line mileage of the Chicago and North Western indicated on the map.

Q. Will you please discuss such coordination dealing first with coordination of passenger traffic and then with coordination of freight traffic, stating in each case the facts upon which your plan is predicated.

A. My study of the passenger traffic on the lines
5340 of Milwaukee and Northern and the Chicago and North Western lines referred to above indicate that the St. Paul and the Chicago and North Western are furnishing virtually duplicate passenger service north from Milwaukee to the iron and copper countries in the Michigan peninsula.

Prior to March 13th the St. Paul was running three trains daily each way between Milwaukee and Channing. On the average these trains did not pay operating expenses. Even for the week of July 10, 1936, a period of the year when traffic is good, Iron Country Limited (Nos. 3 and 46) averaged only 71 cents per mile between Green Bay and Iron River, 156 miles.

On March 13th, 1938, the St. Paul management combined the Copper Country Limited with the Iron Country Limited.

In view of the extra out of pocket maintenance of way cost required to maintain a standard of maintenance permitting fast passenger service, it is doubtful whether this

reduction in train service will result in realization of profit from these trains.

Passenger traffic depends almost directly upon the population of the towns served by the trains. As indicated on my map, I. C. C. Exhibit No. 211, there are no large
5341 towns other than Green Bay on the Milwaukee and Northern between North Milwaukee and Iron Mountain.

The bulk of the population of this territory is located in the towns served by the Chicago and North Western lines. The intermediate towns on the Milwaukee and Northern have a total population of less than 30,000, while the intermediate towns on the Chicago and North Western have a total population of over 130,000.

The St. Paul trains maintain a schedule from Chicago to Iron Mountain of six hours and fifteen minutes, while the fastest time by the Chicago and North Western is ten hours and fifty-five minutes.

The fastest time from Chicago to Menominee-Marinette on the Chicago and North Western is seven hours and twenty minutes, at an inconvenient hour, and as a result many people drive from these towns to Crivitz to avail themselves of a five hour and sixteen minute service to Chicago on the Milwaukee and Northern—St. Paul trains.

Director Sweet: There is a railroad line between Menominee, Marinette and Crivitz.

The Witness: But no passenger service. They actually drive across country and take the train at Crivitz to
5342 avail themselves of that service, which is an excellent service.

This situation indicates that the passenger services on the two lines should be combined and the fast through service should be operated over the Chicago and North Western rather than the Milwaukee and Northern lines, service on the Milwaukee and Northern being reduced to local service with gas electric or other light power.

There is little doubt that such fast service would develop substantial additional travel on the Chicago and North Western and it is my belief, based upon a study of the highways serving the territory, as indicated on my map, I. C. C. Exibit 211, that little through passenger traffic now obtained by the Milwaukee and Northern would be lost since passengers would drive to the Chicago and North Western stations or use the connecting trains of the Mil-

waukee and Northern to and from Green Bay or to and from Milwaukee.

The elimination of fast through passenger traffic on the Milwaukee and Northern would permit a substantial reduction in the cost of maintenance of the Milwaukee and Northern lines and would free them for an increased and more effective use for freight.

5343 I believe that coordinated passenger service on the two lines should earn a substantial profit and increase both the local and through passenger traffic on these lines.

Dealing now with the coordination of freight service, my studies have indicated, as will appear from the map, that freight service from both the Milwaukee and Northern and the Chicago and North Western is received by the following towns:

Plymouth, Neenah, Menasha, Appleton, Green Bay, Oconto and Marinette, Wisconsin, and Menominee and Iron Mountain, Michigan.

A large number of industries particularly the important ones in these cities are served by both lines. The country is open so that no unusual constructional difficulties presented themselves in getting switching lines into important plants.

Competition for heavy traffic made such construction desirable. The non-competitive industries at these points are for the most part the smaller ones whose traffic contribution was not large enough to warrant the expenses of a connection by the other line.

At Plymouth, the principal industries are served by both lines. There are nine such industries. There are also
5344 five served exclusively by the Chicago and North Western and nineteen exclusively by the Milwaukee and Northern.

At Neenah-Menasha, there are six joint industries, nineteen exclusively Milwaukee and Northern and twenty-eight exclusively Chicago and North Western.

At Appleton, there are six joint industries, fifty-one exclusively Chicago and North Western and three exclusively Milwaukee and Northern. These last three points are on a principal line of the Chicago and North Western while the Milwaukee and Northern comes in over a branch from Hilbert. This move involves two road freight crews operating between Hilbert and Appleton.

At Green Bay there are five joint industries, twenty-

four exclusively Chicago and North Western and thirty-three exclusively Milwaukee and Northern.

At Oconto, there are three joint industries, one exclusively Milwaukee and Northern and ten exclusively Chicago and North Western industries. The Milwaukee and Northern formerly entered Oconto over its own line from Oconto Junction.

A joint trackage arrangement was then made to use Chicago and North Western rails from Stiles June-
5345 tion to Oconto. The Milwaukee and Northern line was then abandoned from Oconto Junction to the edge of Oconto.

At Marinette there are twelve joint industries, six exclusively Milwaukee and Northern and eleven exclusively Chicago and North Western.

At Menominee there are fourteen joint industries, three exclusively Milwaukee and Northern and fourteen exclusively Chicago and North Western. In these two towns the switching leads of the two lines parallel each other through the industrial districts.

At Iron Mountain there are three joint industries, Ford Motor Company being one of them. There are thirteen exclusively Milwaukee and Northern and twenty exclusively Chicago and North Western industries.

Switching on joint tracks involves much loss of time. One crew spots cars at desired locations. Then when the other crew comes, it frequently has to move those cars out of the way to do its work and then set them up again. The time required to move the cars out and back is a dead loss.

Coordination of the switching at these common points would eliminate all of this lost motion, and give faster and more satisfactory service to shippers.

5346 Coordination of passenger and freight service on the mileage of the Milwaukee and Northern and of the Chicago and North Western shown on the map, I. C. C. Exhibit 211, would permit an increased use of the shorter Milwaukee and Northern main line for expedited freight service, some freight train mileage could be eliminated by the rerouting and combination of existing trains and considerable switching eliminated.

Q. What would be your judgment as to the possible economies that could be effected by coordinated operation of the Milwaukee and Northern and the northern lines of the Chicago and North Western, indicated on Exhibit 211?

A. The transfer of the passenger service would permit

maintenance of the Milwaukee and Northern main line on a freight basis instead of on a fast passenger basis.

The branches from Crivitz to Menominee, from Menasha to Appleton would have service eliminated. Switching would be reduced at Menominee-Marinette, Oconto, Green Bay, Iron Mountain, Appleton, Neenah-Menasha and Plymouth.

The Chicago and North Western would also effect savings on its branch through Forest Junction. Based on the traffic and operations of 1936 as covered in the debt-
5347 or's exhibits 141 and 156, without giving effect to any intangible or doubtful items, the total annual savings to the two roads (but principally the Milwaukee and Northern) would, in my opinion, be as follows:

Now, in detail, as to station savings:

Iron Mountain $8,583.08.
Marinette $2,439.24.
Menominee, $4,866.84.
Appleton, $4,846.08.
Neenah-Menasha, $5,803.28.
Plymouth, $2,590.92.
Oconto, $2,380.20.

For the Coordination savings:

Crivitz-Menominee Branch $15,400.
Appleton Branch $4,200.
Hilbert Junction-Menasha $5,250.
Secondary Maintenance $79,200.
Passenger trains $289,080.
Station savings $31,509.
Menominee Service $22,464.
Green Bay, one trick, $19,968.
Menominee-Marinette, one trick $19,968.
Appleton-Hilbert Crews $44,928.

Chicago and North Western Maintenance on their
5348 line, $47,600.

Possible extra gas car trip $43,243.

The Milwaukee and Northern gives you savings combined as follows:

Station Savings $31,509; passenger train operations $245,838; yard and road operation $107,328 and maintenance of way $151,650, or a total of $536,325.

Additional savings not included in this estimate could, in my opinion, be realized in operations on the Chicago and North Western mileage involved and in terminal and station rearrangements at Iron Mountain, Plymouth, Green

Bay and other common points, as well as from continued improvement in freight train operation which would result as coordination progressed.

Substantial additional revenues should also be realized from the routing of fast passenger trains through the more populated sections through the attraction of new business.

In my opinion, these additional savings not included in my estimate of $536,000 per annum would amount to $275,000, making a total potential saving from coordination of over $800,000 per annum for the two roads.

For example, I have included in my estimate $19,968
5349 savings at Green Bay, while a coordination study made by the debtor's personnel in 1934 showed a potential estimated saving of $170,000 for three roads serving Green Bay. Such estimate involved some capital expenditures.

The traffic experience in the mid-west on the high speed trains serving populous territory furnishes a sound basis for an estimate of an appreciable increase in passenger traffic in this territory under the proposed plan of coordination.

Q. Kindly state whether you have discussed your plan of coordination with representatives of the St. Paul and of the Chicago and North Western.

A. I have discussed coordination with several representatives of both roads and have discussed with some of them my estimates of the economies and increased revenue to be derived therefrom and none of the persons with whom I have discussed these matters appeared to disagree with my conclusion that coordinated operation would be desirable and would be productive of substantial savings and increased revenues.

Q. In your opinion, would such coordinated operation of this mileage be practical if the Milwaukee and Northern lines were severed from the balance of the St. Paul
5350 system?

A. Yes, I believe that such coordinated operation would be possible and desirable under those circumstances and that the capital requirements of the Milwaukee and Northern would not exceed the amounts indicated in my earlier testimony relating to independent operation on severance of the Milwaukee and Northern from the balance of the St. Paul system.

Mr. Marsh: I offer Exhibits 211 to 214, in evidence.

(EXHIBITS 211-214, Counsel Marsh, received in evidence.)

That is all.

Director Sweet: Any cross-examination of Mr. Richardson?

Mr. Smith: Just two or three questions.

Cross-Examination.

Q. (By Mr. Smith.) You spoke about the interest that was charged on the equipment which is 5 per cent, as being somewhat in excess of the average rate of the Equipment Trusts of the debtor; I think you mentioned 4 per cent.

A. Possibly.

Q. As a matter of fact, that figure is—

Mr. Marsh: That was not the statement he made.

Mr. Smith: Oh, I am sorry.

Q. (By Mr. Smith.) What did you say about that?

5351 Mr. Marsh: The prevailing rates, I think.

The Witness: The prevailing rates.

Q. (By Mr. Smith.) You did not refer to the debtor?

A. No.

Q. Did you have in mind that the record shows that the rates on the Equipment Trusts of the debtor average approximately 4.7 per cent?

A. I didn't have that in mind; no.

Q. And the interest on the funded debt of the debtor, approximately 5 per cent, or in that neighborhood, did you have that in mind?

A. No; I did not.

Q. Did you make any investigation of what the additional charge against the Milwaukee and Northern Lines would be if consideration were given to a charge on the stand-by equipment necessary to operate the Milwaukee and Northern Lines?

A. No. I studied the Milwaukee and Northern traffic requirements, and that is a line that is not subject to much droughth. It is a very good farming country and a very uniform product, so that where you have to have a heavy stand-by equipment for lines that are subject to droughth, you don't have to have much stand-by equipment for a line like the Milwaukee and Northern.

5352 Then, another thing, you will observe that two-thirds of the equipment used by the Milwaukee and

Northern is flat cars, and if you have followed the purchase of new equipment in the last few years, there have been practically no flat cars purchased for over ten years. There is more service in the equipment that is standard with the Milwaukee and Northern than any other type.

Q. Did you estimate whether there were any seasonal fluctuations of traffic on the Milwaukee and Northern lines, or any traffic variations between one year and another?

A. There is some variation from one year to another.

Q. And the charge for equipment was made on the basis of the actual cars, the minimum number of cars in use, wasn't it?

A. Yes, which represented a fairly average year.

Q. Well, did you attempt to assign any money value to the amount of equipment that will be necessary to stand by, for the Milwaukee and Northern, either to take care of the seasonal movements, or to take care of equipment while being repaired, or anything of that sort?

A. It would not require very much.

Q. I say, did you put a money value on it?

5353 A. No.

Q. This $536,000 of savings that you referred to, does that cover savings both for the Milwaukee and Northern Lines and the Chicago and North Western Lines as the result of the coordination that you outlined?

A. It does. The bulk of it is on the Milwaukee and Northern; the great bulk of it.

Q. What is the division of that, please, if you have it there?

A. Well, I did not divide it between the two lines. For instance, here, take it at Marinette-Menominee, where you take that shifter out, you would really save part of it on the North Western and part of it on the Milwaukee, but I figured the whole thing against the Milwaukee, reaching a total amount saved through coordination.

Q. Well, you have got some North Western savings included.

A. Yes, but that was only on trackage.

Q. Some saving on trackage?

A. Only on trackage. You take at a point there where you take a shifter out on one side, the other fellow would do part of that work, so that really there would be a saving on both sides.

5354 Q. So that if the proposal were feasible, of course, there would have to be a large enough increment in

this total savings that would go to the North Western to induce the North Western to enter into it.

A. Quite Right. The North Western would have to get a cut.

Q. What part of that, if you made a study, would be a saving from reduction in labor cost?

A. There was no separation between labor and materials.

Now, you take the economies in trains; you have a figure of so many cents per mile for operation. That includes locomotives repairs. Well, locomotive repairs; part of that is labor and part of that is material.

We used standard figures all the way through, and without going back to the foundation figure and splitting the foundation figure, it would not be possible to make a detailed statement as to just how much of that is labor and how much is material.

Q. Probably it would be conservative to say that more than half of that would be labor?

A. That would be a conservative statement; that is all.

Q. Have you made a study of consolidations and coordinations that might be possible with reference to
5355 other Milwaukee lines of the Debtor?

A. No, I only concerned my study to the Milwaukee and Northern.

Q. You have, however, I take it—

A. I used the word "coordination" and not "consolidation".

Q. I see. You did not say "consolidation" at all.

A. I said "coordination".

Q. I was in error then.

A. Excuse me.

Q. If you, upon studying these other Milwaukee Lines, found the same possibility or like possibilities that exist with respect to the Milwaukee and Northern, and if such consolidation which upon test might be found feasible were made, it would presumably leave the relative position of the Milwaukee Lines about in the same situation, wouldn't it?

A. Well, I couldn't answer that question without making a survey.

Q. And you just have not made that survey?

A. No. You are taking in too much territory for me.

Mr. Smith: All right, sir, that is all.

Director Sweet: Any other questions? That will be all, Mr. Richardson, for the present.

(Witness excused.)

5356 Mr. Pantaleoni: I would like to put Mr. Parker on the stand.

Director Sweet: Have you concluded, Mr. Marsh?

Mr. Marsh: Yes, sir; I have concluded, thank you, sir.

GEORGE H. PARKER, was sworn and testified as follows:

Direct Examination (Continued).

Q. (By Mr. Pantaleoni.) Mr. Parker, you have testified previously in this case, have you not?

A. I have.

Q. And you made certain comments on the Exhibits designed to reflect the amount of income available for interest for the several mortgaged lines?

A. I did.

Q. And those comments were primarily concerned with pointing out wherein the results which those exhibits purported to show were open to question; that is, that the estimates and apportionments had been made which were not completely determinative on the questions they were intended to resolve, and that some of the data used needed further consideration; is that right?

A. That is correct.

Q. You did, however, point out that as far as 5357 your analysis had gone, the indications were that the net income of the property subject to the lien of the First and Refunding Mortgage was greater than that reflected by the Exhibits?

A. Correct.

Q. Now, since the last hearing, have you made a further analysis of the data you collected, incident to your examination, and are you able to point out more definitely the effect of the criticisms which you gave in general terms previously?

A. I am.

Q. Will you please state the net income which you estimate as the result of your examination, to be available for interest on the properties subject to the lien of the 5 Per Cent Bonds of 1975?

A. The net income available for interest on those properties as shown by my analysis after the payment of interest on underlying bonds and interest on equipment trust Series E for the year 1936 was approximately $2,200,000 as compared with approximately $7,200,000 for the properties of the General Mortgage Bonds, or slightly less than 20 per cent of the total for the properties for the five's and slightly over 80 per cent for the properties of the General's.

Now, in arriving at that figure I have made cer-
5358 tain adjustments in Exhibit No. 181, or rather, the figures in Exhibit No. 181.

These adjustments fall into two groups.

In my previous testimony I made certain criticisms of apportionments made for Exhibits 139, 141, 143 and 145.

I have considered it practicable to translate some of these criticisms into reliable, definite figures.

It must be remembered that in the original apportionment, probably not a single revenue or expense account can, as a whole, be said to represent either the actual revenues or expenses of the properties.

Wherever I have had data which enabled me to restate an item in fairly definite figures, so as to be more clearly related to actualities than apportionment, that I have done.

The first group of adjustments is of that character.

The second group of adjustments consists of criticisms of equal validity as to the first group, but as to which I have not been able to calculate them with the same degree of nicety, and have had to resort more largely to esti-
5359 mates or approximations; in other words, while the adjustments of this character, which I have made, fully satisfy me that I have not thereby overstated the net income of the properties of the 5's of '75, I am not in possession of sufficient information to submit a mathematical demonstration of them.

The adjustments which I have made of the first group consists of (1) An increase in the freight revenue of the lines west of Mobridge—in respect to an error in calculation which I referred to in my previous testimony—amounting to $81,937.

(2) A reduction in the item of repairs to freight cars on the lines west of Mobridge, on the basis of the fact that considering the differences between the operating conditions, comparing the Western Lines with the System, length of haul, greater terminal handlings of cars, that

the cost of repairs per mile run for the system is not a correct measure of the item on the Western Lines, a reduction in the expenses of the expenses of the Western Lines of $301,986.

(3) A reduction in the terminal expenses, charges to so-called bridge lines $136,550, which is one-half of the terminal expenses charged to the Bowdle-Mobridge
5360 and the Muscatine-Rutledge segments, on the basis of the fact that the ratio of the expenses of the Chicago —Milwaukee Twin City terminals to the total system revenues is not a correct measure of this element, even assuming that a charge of that sort is proper at all, inasmuch as those terminal expenses are unduly weighted with a considerable volume of local switching.

(4) An adjustment of the traffic and general expenses apportioned to the Gary and the Milwaukee and Northern, so as to put them on a basis uniform with the apportionments of the other lines.

This reduces the net income of the 5's of '75 group of properties $4,883.

(5) A restatement of rents charged for system equipment, using a rate of 1.31 per cent, which was the average rate of return for the system in 1936, on total property investment in place of the 5 per cent rate which was used in Exhibit 181.

In my previous testimony I expressed doubt as to whether any charge should be made inter-Mortgage Lines for use of system equipment. At any event the charge should be not higher than at the rate of return on the investment as a whole which was, as I said, 1.31 per cent for the year 1936.

The restatement of this element comprehended also
5361 its affect on the revenues for handling company materials.

This change increased net income of the 5's of '75 properties as follows:

Decrease in rent of system equipment, $975,240 with a decrease in revenues for haul of company freight, net, $47,710.

Now, in regard to the second group of items, it seems to me entirely clear that since the inter-mortgage charges are to be made for the use of the facilities of one by the other, or the rendition of service therefor, I provide that the cost of handling company materials should be computed on the basis of all costs, or substantially all costs, recognizing that

there is some difference, not much, however, between the cost of handling company freight and commercial traffic.

I was unable to complete my calculations with reference to some of these items. With an estimate of that character, based on such estimates as I can make, that is, my general knowledge of the amounts which are included in the calculations which, for the purpose of Debtor's Exhibits were the out of pocket costs on the various mortgage divisions,
and with such general knowledge as I have of the
5362 mortgage divisions over which the company material would move, respectively, I would estimate that that would increase the credit for handling company material for the group of properties for the 5's of '75 by about $400,000; in other words, your out of pocket cost is about 4 mills. I suggested in my previous testimony, I think perhaps it ought to be increased to 5.5 mills, so it increases about 25 per cent, roughly, which would be about $400,000.

The second item I have listed under the first group of items is repairs to freight cars, as having been erroneously apportioned on a system car mile cost basis. The same thing is true in connection with the depreciation.

There is something like $1,500,000 for depreciation of equipment included in Exhibits 139 and 141, 143 and 145 of which, as I recall it $719,000 was in respect to depreciation of freight cars on the Western Lines.

I have in my own mind abundant support for the adjustment which I have suggested with reference to the freight car repairs. There is a considerable volume of data and study of that both in the files of the Commission and elsewhere, but with reference to the depreciation I have
5363 the same data in mind, and I do not know where it could be procured, and in the absence of some definite knowledge as to the absence of number of car days involved on the east and west lines, respectively, I would hesitate to do anything other than to just make a rough apportionment.

Roughly, I think, it would follow approximately the situation as to the freight car repairs, which would go therefore, to increase, or rather diminish the charge for depreciation in the amount of about $150,000, $175,000, charged to the lines west of Mobridge.

Now, another item which I would classify in this group is the further adjustment of revenues which I feel satisfied would be made if we had a full analysis of the traffic and had it allocated on a thoroughly satisfactory basis.

In my previous testimony I referred to the fact, as explained by the debtor's witnesses, that the revenues for the Western Lines had been determined by an actual four months' pro-rate, and that compared with the figures reported to the States, which were computed on a net ton-mile basis.

Now, I call attention to the fact that the spread between the revenues computed on a net ton-mile basis and the
5364 actual figures was 24 per cent. That is, the figures reported to the States, were said to be 24 per cent higher than the actual basis.

I also call attention to the fact that back in 1926 or 1928, I think it was the spread was only about 12.5 per cent.

I have not been able to make any more extended examination of them since I was here before, and only fragmentary data are available to analyze it, but that difference in the situation can only come about on the explanation that the net ton miles, or on the basis that there has been a relative increase in the traffic carrying a low average per ton per mile on the western lines, and when I say "relative increase" I mean that the traffic of that character is proportionately a greater part of the tonnage for the system, that is, the total for the lines east and west, rather, but as far as I can find out, the exact opposite of that appears to be true.

There was a traffic analysis put in this record by an order of the Commission, which was made by the Bureau of Finance, which gives some analysis of the movement of traffic, and there it appears that the revenue has fallen off in greater degree than any other commodity, I think it stated, speaking now with reference to the particular
5365 period that I have been talking about.

Of course, that relates to the system as a whole. I don't know whether that holds good on the western lines, but assuming it to hold good on the western lines and remembering that the revenue is said to be the low average revenue of the ton per mile traffic, then, as I say, it would seem to destroy the sufficiency of demonstration that the earnings computed on the net ton mile basis today are 24 per cent higher than actual, when in 1926 they were only 12.5 per cent higher, and my own judgment about that is, based on my own analysis as those I have just tried to summarize hurriedly, would be to add probably half a million dollars to the revenues of the Western lines.

Now, there is another element of the matter that is of

some importance, and that is, I think, the maintenance expenses for the year 1936 are probably somewhat weighted with some deferred maintenance of the earlier years which would have its bearing that it would show that the actual revenues properly attributable to 1936 would be somewhat greater probably than they appear, but I think that would probably apply in equal degree both to the lines east and west, so that it would not affect the matter from the
5366 point of view which I am just now discussing.

Now, those items, as I recall them, total up, that is, both groups, about $1,000,000.

I made a calculation in addition, roughly, because some of these figures have been put together rather hurriedly, at the last moment, on the basis of allowing for the system equipment the rates on the depreciated value of the equipment against which there are outstanding certificates, equipment trust certificates, at the rates for such certificates, and computing the remainder of the equipment above that figure at the 1.31 per cent, which, as I have explained, was the average rate of return on the property investment as a whole for the year 1936; and the effect of that adjustment as a whole would be to reduce the net income of the properties of the 5's of '75 by about $250,000. which would produce a net income after taking care of the interest on the underlying mortgage bonds $1,972,525, and for the Generals after taking care of their portion of the interest on equipment trusts of $6,368,727.

I have not worked out those percentages, as a matter of fact, the figures I have given as to the equipment adjustment are round figures anyway, so that there would be
5367 no point perhaps in working out the precise ratio there.

Now, based on that data and other data which I have studied, I would conclude that the proportionate value of the properties, of the 5's of '75 to the whole system is about 25 per cent and the Generals 75 per cent.

When I speak of the 5's of '75, I mean including the Terre Haute Lines, the Milwaukee and Northern, the Chicago, Milwaukee and Gary, the lines west of Mobridge and the so-called pieces east of Mobridge.

Now, in addition to the income account which I have thus briefly summarized as adjusted, I have looked at a good many other matters incident to reaching that conclusion; for example, the miles of road owned by the respective groups of properties is in the ratio, or is in percentage of

the total to the 5's of '75 about 41.5 per cent and the Generals 59.5 per cent.

The investment in the two groups of properties respectively 42.5 per cent and 57.5 per cent.

Those figures were taken from Exhibit No. 76, and relate to, I think, December 31, 1935. There might be some change at the present time.

Now, I have also thought very carefully about the difference in the physical conditions, conditions under
5368 which they operate, and various matters affecting these railroads and the territory through which they run.

For example, I know that in speaking of the number of miles of road, the relationship between them, that that, of course, does not tell the whole story with reference to the size of the property.

There is a considerably greater amount of double trackage on the third, fourth, and on the Generals than on the 5's of '75; also that the age of rail in track is somewhat less on the lines east than on the lines west.

For example, on the line from Chicago to Milwaukee, 7/10 of 1 per cent of the rail is less than fifteen years old, and all of the rail from Milwaukee to St. Paul and Minneapolis is less than 15 years old, whereas on the Takoma rail, 37.5 per cent is more than 15 years old.

The depth of the ballast on the lines west of Mobridge is somewhat less than the lines on the east thereof.

The lines east also show up in more favorable light when the comparison of treated and untreated ties is considered.

Now, of course, these differences are explained
5369 in part by differences in density of traffic and speed of trains on the respective portions of the system and to a certain extent the implication is adverse to the lines west by reason of the matters that I have spoken of and are offset by other conditions in that the construction and upkeep of those lines is suited to the conditions which must be met.

And, in addition, of course, the heavier track and greater density carry with it, of course, certain obligations which must be met.

For example, I understand that the rail program of the Milwaukee contemplates over the next five years something like 1,279 miles of rail to be replaced, and out of that there is only about 60 or 70 miles that applies to the western lines.

I have also noted that the western lines, of course, as is well known, have the heaviest grades on account of the mountains, but on the other hand, the Terre Haute Division, which is a part of this group, has the greatest traffic density of any division on the system.

I might say I have got quite a lot of figures here, but I am trying to summarize for the record the things that I have said rather than to try to encumber the record with a great deal of detail which I am really not in shape
5370 to submit and which ought to be in Exhibit form.

However, I have also set out at considerable length the situation as to the branch lines. There are a good many traffic branch lines on both the eastern and also on the western group.

My own study leads me to conclude that in that regard probably the situation as to the lines of the First and Refunding Group and the lines of the General is about a stand off.

Having regard, however, to the possibilities of consolidation and coordination, my own judgment is that when we get through with what appears to be possible in that direction, that you will be left with a railroad west of Mobridge that can be more economically operated as a whole than the lines east of Mobridge; as I say, you will have two or three divisions that are of considerable length of main line, which I suppose will remain in any consolidation or coordination proceeding, which will adversely affect the situation of the eastern lines.

For example, on the Iowa Division, the net tons per train in 1935 were only 516 tons, and the Iowa and Dakota Division was 320 net tons per train, and the Iowa and Southern Minnesota Division 236 tons per train, which, com-
5371 pared with the division west of Mobridge, trans-Missouri, was 804, Rock Mountain 777 and the Coast Division 569.

5372 With regard to the trans-Missouri Division, it may be pointed out that in spite of operating 298 miles or 36 per cent of total road mileage, of rather thin traffic density branch lines and having a helper distribute with a total length of 31 miles in main line territory, this division has the lowest freight transportation costs per 1,000 gross ton miles of any operating unit of the system, except the Terre Haute Division, which has the advantage of a traffic consisting preponderantly of bituminous coal.

One reason for this is that the traffic volume in net tons is practically without change for the entire distance between Mobridge, South Dakota and Round Up, Montana, approximately 87 per cent of the main line mileage.

The result of this traffic consistency is that trains remain almost unbroken from one end of the division to the other, and that there is very little intermediate classification work to be performed. The considerable volume of coal traffic which originates at Round Up, out of Milstone, from which point it is dispatched in solid trains or is used as a filler for through trains.

I have got a summary for the sheets as to each thin traffic branch, both on the lines east and west, but
5373 at the present time all I wish to state is that my general conclusion is that it appears to me that they about offset each other, and that, so far as I can visualize what is likely to come out of coordination and consolidation, as I say you will have a line west which can be more economically operated than east.

Now, there a number of factors, also, which affect the situation of the lines west. For example, there is a number of irrigation projects in the Northwest, the largest of which is the Grand Coulee, which, as I understand it, proposes developing a great amount of additional irrigable lands in the Columbia River basin, across which the Milwaukee directly cuts, and there are also other projects.

Mr. Burgess: I did not understand what question it was that the witness is now answering.

Mr. Pantaleoni: I think that is perfectly proper.

Q. (By Mr. Pantaleoni.) Mr. Parker, will you describe some of the difficulties which you think will affect the future of the western lines as distinguished from the present situation?

A. I just started to speak of the irrigation projects in the Northwest. That is not only likely to produce
5374 additional traffic, as it develops, but is also likely to lead to reduction in the power costs for the electric power which is so largely used by the Milwaukee out in that territory.

Director Sweet: Have you any idea as to which carriers are most likely to benefit by the Coulee Dam project?

The Witness: I thought the Milwaukee had about as good a chance to benefit by it as any road through there.

Director Sweet: As good a chance as the Northern Pacific?

The Witness: Yes, sir.

Director Sweet: And the Great Northern?

The Witness: Yes, sir. My understanding was that that comprehends a very large development down through the Columbia River basin, which the Great Northern cuts across, and talking with the people in the National Irrigation Association, where I got some information on this, was where I got that impression. I have not been out there and looked the ground over, however.

Director Sweet: That project is pretty well north of the Milwaukee Line.

The Witness: The dam is, yes, sir. That is true.

5375 Grand Coulee Dam is considerably above the territory which, as I understand it, is contemplated to be irrigated by the dam.

Director Sweet: You spoke of the coal at Round Up. That is not coal, is it?

The Witness: I do not know much about that feature, Mr. Director. I see in the reports references to coal from Round Up, and that is about all I know about it.

Director Sweet: Do you know anything about the volume of it?

The Witness: No, I have not any figures on that. I think it is relatively small. It is not a large item.

Director Sweet: Do you know whether it is increasing or decreasing?

The Witness: My understanding is that it is increasing.

Director Sweet: Have you got any information about that?

The Witness: No, I am sorry, I could not give you any enlightment on that. I simply noticed in the reports, as I was examining them, that there was a certain amount of coal, and that was the way it was handled as an operating proposition.

5376 Director Sweet: Do you know anything about the extent to which the people formerly using Round Up coal or lignite, or semi-bituminous, have now gone to the use of oil and natural gas throughout that territory?

The Witness: No, I have not any information on that particular point. I understand that out through the Northwest, further west of that, that there is being a considerable tendency to go to electrical power and the use of electricity in places. There is an increase of that.

Of course, it is believed by people to whom I have talked

about this territory, Washington and Montana, that the increased power will result in a very great development of that section; that the increased electrical power will make that possible.

Director Sweet: You are counting more on the development of power and production as a result of irrigation than you are on the development of coal traffic at Round Up, are you not?

The Witness: Oh, yes. I was not thinking of the coal traffic particularly, but I merely mentioned that in an incidental way as to how it was handled as an operating proposition.

As I understand it, they look forward out there
5377 to a very considerable development in connection with this irrigable land and also in connection with the increase in power.

Now, of course, it is true that there has been some falling off over the last few years in exports. Our grain exports have fallen off. But with any recovery at all in this country—and I certainly hope that we shall have it—I think that this Northwest territory bids fair to enjoy a very great share of the revival.

Q. (By Mr. Pantaleoni.) Have you got any general observations with regard to the necessity to the Milwaukee System of the lines west and the impossibility of severing those lines, so far as the lines east are concerned?

A. I would like to answer that in this way:

When I was here before, the Director asked me in connection with some of my statements, whether my activities had brought me in touch with the Milwaukee System, and I answered him rather briefly with regard to that.

In my younger days I worked for the Chicago Junction Railway Company, which is now a part of the Indiana Harbor Belt, and I used to see the traffic, that is, the way-bills, rather, coming through our office in connection
5378 with the business from all of the West and Northwest, that was interchanged via the Chicago Junction, and most of which was re-billed at Hammond.

Then when the Indiana Harbor Belt Railway was started—

Mr. Burgess: Is he answering the question that you asked?

Mr. Pantaleoni: Yes, sir. He is giving—

Mr. Burgess: This is background?

Mr. Pantaleoni: This is background to the answer.

The Witness: When the Indiana Harbor Belt started, I opened that station at Indiana Harbor. There had been a switching operation there in charge of a yardmaster for a few months, and it was the nucleus of the Indiana Harbor Belt. Then I was with the contractor who built the Chicago, Milwaukee and Gary, and then for a couple of years or so I was in the Stock Yards Company, and I saw all that traffic coming in through there. That is, six of us handled all the bills which came into the Stock Yards Office and I remember pretty clearly one fellow handled the North Western, one fellow handled the Burlington, and all
5379 the rest were divided up among the four of us.

Then I handled the demurrage adjustments for a short time for the Chicago Junction Railway Company, and that gave me a chance to travel over the Chicago area, and out of that grew a very decided impression that the Milwaukee did not loom very large in the Chicago area at that time and there was no hook-up there nearly as well as the Burlington or North Western.

Further than that I had occasion during that period, in addition to the things I mentioned, in my associations to observe, and my understanding was that the Puget Sound Extension had to be built. The Chicago, Milwaukee and St. Paul at that time was feeling the effects of the fact that it was not hooked up right in that area, and it had to have an outlet to the west, because its other neighbors, the North Western and Burlington were hooked up with the Great Northern, Northern Pacific and the Union Pacific in such strong position that the Milwaukee had to be hooked up, and that extension had to be built.

The way they worked that out in my judgment, was that it not only helped them to build up through traffic, but it helped them to hold their place very definitely in Il-
5380 linois, Iowa, Minnesota, and the territory which was covered by the lines generally.

My own judgment about it is, even though later judgment or hindsight seems to indicate that the Puget Sound Extension was a mistake, my own judgment is that if the Puget Sound Extension had not been built the Milwaukee Railroad would have been pinched out long before this.

They would have been in a position where what is happening today would probably have happened somewhere before the twenties.

With that general background, I have this thought in mind:

That anything which leaves the lines of the 5's of 1975 out of the picture at the present time, I do not care what kind of reorganization plan you approve, if it does not comprehend a complete understanding and knowledge of what that Puget Sound Extension means, that the Milwaukee then will be back here on your hands within certainly three years.

Mr. Pantaleoni: That is all.

The Witness: There is one thing which you forgot, Mr. Counsel.

Mr. Pantaleoni: Have you something more?

The Witness: The question has already been asked with regard to this, because it was one of the adjustments which I failed to describe in answer to one of your earlier questions, and that was—

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Mr. Pantaleoni: Which group does this adjustment go into?

The Witness: This is the second group, and it deals with the questions of the value of the terminals or value of the securities held, or securities pledged, rather, under the 5's of 1975 in such terminals as Des Moines Union Railway, the Kansas City Terminal, the Minneapolis Eastern, the Minnesota Transfer, and the St. Paul Union Depot Company, and without going into detail, I worked out tentatively a figure of about $35,000 as the value that ought to be assigned to that stock equity in those securities.

Mr. Pantaleoni: Have you any other comments, Mr. Parker?

The Witness: I think that is all I have, Mr. Pantaleoni.

Cross-Examination.

Q. (By Mr. Douglas Smith.) How does this figure of $2,200,000, which, as I understand it, is the figure which you now have arrived at for the Western Lines, compare with the figure developed by the Debtor, so that we may have that before us?

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Mr. Pantaleoni: Do you mean the figure in Exhibit No. 181?

The Witness: I have not made that comparison.

Mr. Smith: You do not know what figure the Debtor offered which would compare with this $2,200,000?

The Witness: I know it is in the papers somewhere, but I do not know that. Do you mean Exhibit No. 181?

Q. (By Mr. Smith.) Yes.

A. Pardon me. I was thinking of that as the institutional exhibit. I think I can give you that.

The trouble with it was that the Exhibit was made up with certain group adjustments that were not distributed where they belonged, and I had to recalculate that, and in the process of recalculating it I guess perhaps I have not got it as clearly in mind as I should have.

Q. Let us not stop too long on that. Did the Debtor compute the deficit for these lines?

A. I think so. I think it was about $220,000, as I recall it.

Q. Maybe you had better turn to the Exhibit and indicate what figure you are referring to, if that is the one which you have in mind. Do you have the impression
5383 that you have increased the figure which the Debtor found for these lines?

A. Increased the deficit, do you mean?

Q. No, that you are giving more income than the Debtor found. You feel that way, do you not, or do you have an opinion on that?

A. Yes, I have stated very definitely that I have increased the net income.

Q. If you will indicate how much you have increased it, that will be an answer to my question. Look at Exhibit No. 105, Mr. Parker, please.

A. The Debtor's Exhibit No. 181 showed a net deficit of $220,596 on the group of properties which I have referred to.

Q. I think that may indicate some misunderstanding of Exhibit No. 181, but I do not think you should be cross-examined on that, Mr. Parker.

A. I am quite sure that there is no misunderstanding on my part.

Q. When you were here before and testified, you said that at that time investigation had not been made that was adequate, to your mind, to enable you to resolve some of the speculations that existed in your mind with reference to a number of these items. Is not that substantially correct?

5384 A. I think that is substantially correct.

Q. Now, as I understand it, you have referred to two groups of items:

One group consisting of those items which you have been able to develop with some nicety, as you put it, as to just what the amount is, is that right?

A. That is correct.

Q. And the other group is still somewhat in the speculation realm?

A. They are speculative as to amount, but not as to the principle involved.

Q. As to the amount?

A. Yes, sir.

Q. Now, inasmuch as you have found a conclusion, expressed in dollars, which gives to the Western Lines so much more than the Debtor allocated to the Western Lines, do you still entertain the view that you expressed previously, that your investigation had indicated to you that the debtor had made an honest effort to reach an unbiased conclusion here, or in view of the very large amount which you have now added to those lines in this allocation, do you now have the view that that study was not intelligently made, or was made on the wrong basis?

5385 A. I think you have got a good deal in that question.

Q. Are you able to answer it?

A. Would you mind giving it to me again. I think I might answer it by segments.

Mr. Smith: Break it down and answer it that way.

(The portion of the pending question as above recorded was read by the Reporter as follows: "Now, inasmuch as you have found a conclusion, expressed in dollars, which gives to the Western Lines so much more than the Debtor allocated to the Western Lines, do you still entertain the view that you expressed previously, that your investigation had indicated to you that the Debtor had made an honest effort to reach an unbiased conclusion here * * *.")

The Witness: Let me answer the question that far. I think, generally speaking, the Debtor's officers and staff made a pretty honest effort to reach a fair conclusion. However, remember this:

That at the time that the study was made, there was not any serious controversy about any question of lien, and the Debtor was not called upon, nor was there given any thought, so far as I know, to doing anything other than to make just a stab, if I may describe it thus, at what

5386 represented the revenues and expenses of these two groups of properties. It was just a stab at the—

Q. (By Mr. Smith.) It was—

A. Just a minute. The people did a good job with what they had, but they just turned to the run of mine statistics which were just at hand, and did not go out of their way to get a single thing which would be designed to measure some of the things that are required to be measured in a darned sight more accurate manner than this thing achieves.

Q. And it just left an inadequate basis for determination in fact?

A. There is no question about that.

Q. Of what the segregation should be?

A. There is no question about that.

Q. Now, since the last hearing, and when this thing was in that indefinite shape which you say it was left in by the Debtor's forces, have you been out to Chicago and been through the accounts?

A. I have not.

Q. So that you have not made the detailed study of their accounts that you insisted would be necessary, as you testified here before, in order to resolve those doubts which you said in here in the methods pursued by the

5387 Debtor?

A. Exactly, and for that reason I split these things up into two groups, one of which are connected items about which I feel pretty well satisfied, and the others about which I can only make approximations.

I spoke of the freight car repairs, and I can go up in this building and I can find you a room full of data through all these reorganization proceedings where all the car repairs have been on a per day basis, and cost study people under Commissioner Eastman are making some studies now, and I have been very conservative in the statement which I have made with reference to the adjustment of car repair cost from a per car mile basis down to some basis which will reflect the difference in the conditions between the lines west and adjust for it.

The figure in there on a car mile basis is just simply cock-eyed. Therefore, I have been very positive about the item, but there are some other items about depreciation, and I do not know the others, and therefore I have not approached that. But there was no doubt as to what items appeared in the first group, and they do not result in overstating the net income. They may understate it, however.

I have been very conservative.

5388 Q. Now, since you have not made any study of the accounts, which you told us before would be necessary to reach a conclusion, has your study consisted of taking the data which the debtor put into the record and which you criticized, and do you base your further conclusions on that data? If not, what is the record upon which you base your present conclusions?

A. Are you speaking now with reference to this particular item, or generally?

Q. Read the question.

A. Of course, I have studied—

Q. Do you want the question read?

A. No, I don't care to have it read. I heard it. I have studied a great deal of data which is in this record, and which is out of this record. As I have indicated—

Q. Put in the record by whom?

A. The Debtor, for example.

Q. Is not the record which you said was inadequate as a basis?

A. Inadequate to resolve all the questions which are involved, but not inadequate to determine the extent to which the debtor's calculations are erroneous in certain respects.

Q. In other words, they furnish the basis for some

5389 destructive criticism, but they do not furnish the basis for any affirmative data on which the right answer would be based?

A. On the contrary, my criticisms have been very definitely constructive.

Q. I thought that was the conclusion which followed what you just said. I was attempting to paraphrase what I understood you to say.

A. Put it the other way around.

Q. If you were giving effect to this increase, which you assume here for the Western Lines, what operating ratio does that give the Western Lines?

A. I have not gotten that. By "Western Lines" do you mean the lines west of Mobridge?

Q. Yes.

A. I have not got that figure separately for the reason that in my calculations I have combined the lines west and pieces east in one calculation. I threw them together and then of course I combined all the properties and treated the Terre Haute, the Gary, and the Milwaukee Northern

Lines east and west all as one. I can give you the operating ratio of the group as a whole, if you would like to have it.

Q. What group is that?

A. The one I just described, the Gary, the Terre
5390 Haute and Southeastern, the Milwaukee Northern, the lines west of Mobridge, and the pieces of lines east.

Q. What is that operating ratio?

Mr. Pantaleoni: If I might interrupt a minute, your figures do not include the collateral, do they, Mr. Parker?

The Witness: I am giving only the operating ratio. It is 77 and a fraction.

Q. (By Mr. Smith.) Is that the operating ratio which would compare with the figure of something over 100 which would be developed from the Debtor's study?

A. I do not know that the debtor's study figured it over 100. Apparently, we are not talking about the same thing. May I ask what you understand by "operating ratio"?

Q. When I get through with you, maybe you will want to interrogate me.

Mr. Hodges: That is a legitimate question.

The Witness: You asked what the operating ratio was, and I asked you what you meant by "operating ratio".

Q. (By Mr. Smith.) Do you know what operating ratio is?

A. The ratio of operating expenses to earnings. It is usually the ratio of operating expenses to earnings.

Q. Do you know what ratio of operating expenses to earnings would be derived from the study which was
5391 made by the Debtor? Would it be over 100? If you do not know that without looking it up, we will pass that.

A. I cannot remember all these figures, but I can give it to you, if you want it.

Q. This figure of $2,200,000, what lines does that cover? Is it the same group of lines to which you have just referred?

A. Yes, sir.

Q. You referred earlier in your statement to some error in computation or mathematics that the Debtor had made. Will you be good enough to state again what that was and the amount that resulted from that error?

Mr. Pantaleoni: May I suggest that that is outlined in

considerable detail in the testimony at the last hearing, I believe?

Mr. Smith: I want to be sure that is the same error he is referring to here. There he said it was a deduction from gross instead of net.

The Witness: That is the same item.

Mr. Pantaleoni: That is the same item.

Mr. Smith: Yes, sir.

Q. (By Mr. Smith.) How much is it?

A. $81,793.

Q. Now, this increase in freight car repairs, to which you referred, that is one of those which is very defi-
5392 nite and clear cut, is it not?

A. Yes, sir.

Q. Will you tell us how that was derived? I did not follow your statement.

A. I made some calculations which indicated that the ratio would be about 60 per cent of these figures. I set it up at actually 80, about midway between what I thought was the extreme figure, based on the data which was given to me, and I think you will find 60 used in some case, and actually I adopted 80, which is well within the relationship which exists, or rather the difference which exists in computing car repairs on a car day basis and mileage.

Q. And what?

A. It is based in part upon my general knowledge of the approximate differences in density, the length of haul on the eastern lines and the western lines.

Q. That is, you arrived at this difference with the debtor as to what the actual car repairs should be by taking into consideration total length of average haul?

A. Roughly, you see, your car repairs increase with your yard engines rather than with your length of haul, and your cars move more expeditiously. It is well established in dozens of cases before this Commission that a per mile basis does not measure the cost of comparing
5393 different properties.

Q. Now, I have taken the factor that there will be more terminal services on the cars handled on the lines east?

A. Not at all. There will be the same—let me see if I understand your question.

Q. Per car day or per car mile.

A. There will be a greater number—I think the answer to your question is "Yes". I want to be perfectly frank,

and I am not always sure we are talking about the same thing.

Q. I am sure, but you have discussed so many elements and here is one that you said was absolutely definite and clear cut, and there would be no difficulty in arriving at the expense of the number of dollars that the expense of the western lines was overstated by the Debtor, and I just asked you now to indicate just how that total figure was arrived at, which you say is perfectly clear cut.

A. Let me answer it this way:

I am not saying that as to a car which moves between Chicago and Tacoma, that will encounter more either on the Eastern Lines than on the west, or vice versa, but I say that in the eastern territory you have got a great
5394 deal of traffic with short hauls, with consequent increased terminal handlings, all of which is increased in the system car mile costs.

Q. Is it not a fact that the Interstate Commerce Commission has allowed higher rates in the west on the ground, among other things, that car repair expenses are higher in Mountain Pacific territory because of that type of operations than in the territory east?

A. I do not know.

Q. You do not know that?

A. I don't know that, no.

Q. If it has been recognized that car repairs are higher in mountain operations than in prairie operations that is a factor which would have to be considered, would it not?

A. I never heard of that in my own railroad experience. I never heard that advanced or ever encountered it as a fact, but there is the fact, the other fact, fully established by a great many cases, and it is so perfectly obvious as a matter of fact. Here is a car, we will say, that moves 100 miles to the eastern territory in a day, and it moves 200 miles in the western territory in a day.

Under your per car mile basis, the road in the west gets charges of ⅔rds of the cost of repairs to that car, whereas on the per day basis it gets charged with one-half
5395 and that is where the increased terminal handlings per car come into it. There is no question about that.

As I say, when you come to the actual mathematics of it, I took 80 per cent, because all the figures that I could procure—I could get you a bushel of them if you want them—consisted of figures much larger than that, from 60 to 70

per cent, and I adopted 80. So that the actual mathematics of it is not as precise, perhaps, as my testimony indicated.

Q. One thing more about that. You have qualified as an expert here, and as a matter of fact, in your judgment, does it cost the same from the standpoint of freight car repairs, to operate a car over a mountain territory as it does over prairie country, or does it cost less in mountain territory, or does it cost the same in both, or do you know?

A. Of course, a number of things would enter into that, such as the kind of loading, et cetera. Assuming the same kind of loading, but so far as my own experience goes it would not make any difference from the point of view of that particular element alone.

Q. Have you made a study to determine whether or not you are right, or have you given any consideration to that factor?

5396 Mr. Pantaleoni: I think the witness has answered that question already, stating that he never was aware of any such—

Mr. Smith: Have you made that?

The Witness: No, I have made no such study of it.

Q. (By Mr. Smith.) What is this increase in freight revenues which you have allowed?

A. Increase in freight revenues?

Mr. Pantaleoni: Is that in the second group?

Mr. Smith: No. He named it in the first group, which has been dealt with very meticulously, as I understand it.

The Witness: The only thing as to freight revenues in the first group was the error of $81,000, I think.

Mr. Pantaleoni: I think that was the second group, to which you are referring.

Q. (By Mr. Smith.) Is the traffic on the western lines constant from day to day and from month to month, or is there some fluctuation?

A. There is some fluctuation.

Q. Is it a marked seasonal movement, or is it not? You know, do you not?

A. Now, I have not made an extended study. I

5397 told you in this hearing before what I did do. I have not been out to Chicago, and I have not made an extended study which would enable me to answer questions of that character. The way I dealt with that was on the basis of general statistics.

My impression is that there is a considerable fluctuation, and that it is rather seasonable in character, but I am not

altogether sure about that. I mean, my information is not complete.

Q. Your information with reference to transcontinental traffic, I take it, is not such that you know generally whether it is a marked seasonal movement on transcontinental traffic or not? Is that right?

A. I think that is true, yes, sir.

Q. That you do not know?

A. Yes, sir.

Q. Whether there is or not?

A. Yes, sir, I think that is true.

Q. So that you would not have any idea what the difference between the peak or the top demand for equipment and the low point in the demand for equipment would be?

A. I don't have the facts to answer that particular thing. Of course, that is the very point which makes this allocation of revenues obnoxious, because I am fear-
5398 ful that it does not take in the very things which you are talking about.

Q. Let us find out whether it does or not, without speculating on it.

A. All right, grand.

Q. In your consideration of this problem you have not proposed to charge the western lines for any equipment that was in active use in handling the particular traffic handled. Is that not so?

A. Well, the adjustment I have made is predicated on what is in the debtor's calculation, which I understand takes in the cars on certain commodities which embrace all the traffic on the line on given dates, and therefore takes in a certain amount of idle equipment.

Q. It takes in only the equipment, if any, which might be held at stations for loading and unloading. Is that right, or do you know?

A. I understand that is true.

Q. And it does not give any effect or make any charge for what I think you will agree is the very large amount of equipment that must stand by ready to handle these seasonal movements?

A. I do not know whether it does or not. I do not know whether there is any large amount of equipment which
5399 has to stand by.

Q. Let me find out. Do you know whether the debtor has done it, or whether it is proper to do it? First, do you say you do not know?

A. I understand that the debtor has made a charge for equipment based on a certain count which, as I say, comprehends a certain amount of idle equipment.

Q. How much?

A. When I say I do not know, I mean it is not demonstrated that that does not take care of the situation from the point of view of this company.

Q. All right.

A. As a matter of fact, if you go a little bit further, you have got a certain amount for equipment which is interchanged, and you have got the interchange situation for the foreign lines, and I have not studied it. We do not know whether that is a sufficient safety valve to take care of this as a whole, but whatever credit there is from system equipment on foreign lines as against the charge for foreign lines, comes in through the calculations of the generals here, and thereby it seems to me they get the credit for whatever safety valve that affords.

Q. Now, is this, then, a correct statement of your testimony:

5400 That you do not know how much, if any, idle equipment has been charged against the western lines and you have made no independent investigation of that fact?

A. I do not know what is the separate allowance as to the idle equipment. On the fact of it, it would appear that it is in there, as they have counted it.

Q. To the extent that they have counted it?

A. To the extent that they have counted it.

Of course, the figur are only accurate to the extent that they have done it, in any event.

Q. And you have no judgment as to what the charge would have been, if any charge had been made for the standby equipment necessary to handle seasonal traffic?

A. On the contrary, I have a very definite judgment that no such charge would be necessary.

Q. Just elaborate on that answer, if you will please. Inasmuch as you do not know how much stand by equipment is necessary to handle the seasonal movements, of which you have no knowledge, explain please, how you arrive at the conclusion that no charge should be made.

Mr. Pantaleoni: I say he has already answered it, but go ahead and answer it again.

5401 The Witness: I say, your interchange with foreign lines, your interchange arrangement gives you a sufficiently flexible situation that would take care of the matter.

Q. (By Mr. Smith.) How do you know it is sufficiently flexible, if you do not know what the requirements are for a seasonal movement?

A. I know enough about the railroads of the country as a whole, and about how traffic is handled, and I do not have to prove it or to go any further in order to establish the accuracy of it. It is general observation.

Q. If your recollection has been refreshed by what has been said, if you will now just tell me what the extent of this seasonal movement is on the western lines which you have been studying, I would appreciate it.

A. I have made the statement, and I am not going to change the answer. Of course, as a matter of fact, with reference to this, railroad officers—

Q. I wanted—

A. I wanted to complete my answer to that, if you do not mind.

Q. Surely.

A. I say, railroad officers have to make a certain
5402 car program, not only as to the cars which they will acquire, that is, buy or lease, but also their day to day operations, having cars at certain points, and they do not figure all those things out perfectly. They do not always know just how the traffic is going to turn out, so that the accuracy of my conclusion about that matter is not affected because I do not know the precise monthly variations in the trans-continental traffic.

Mr. Burgess: Mr. Director, might I ask whether the hearing is likely to ask over until tomorrow, or is there a possibility of concluding it this afternoon? What I have in mind is that if it is going to last over until tomorrow, perhaps we might save a little time by letting Mr. Parker step aside.

Mr. Pantaleoni: I have one more witness for ten minutes, perhaps. Are there any other witnesses?

Mr. Sykes: We have a witness.

Mr. Pantaleoni: How long will it take, Mr. Sykes?

Mr. Sykes: Five or ten minutes.

Mr. Smith: Mr. Director and Mr. Commissioner, I think this is the situation:

This testimony was put in very rapidly and not in re-
sponse to questions, and I find that it is very probable
5403 that I did not understand it, and I think that I have some company in that regard in the ranks of the

Debtor's officers, or some of them. It may be that we won't have any more questions, but if we could have an opportunity to try to get together on the notes which we have kept and see if we can understand it, perhaps it would shorten matters.

Perhaps it is clearer than we think it is.

Perhaps I might ask one or two more questions now, and if the thing should go over until tomorrow, perhaps we should like to ask further questions.

Mr. Pantaleoni: May I suggest that we would all like to get back?

I am not suggesting that because I do not wish Mr. Parker to be cross-examined tomorrow, but, as a matter of fact, there is very little in what he testified to today, excepting making it a little more concrete what was testified to at some length in the preceding hearing.

Director Sweet: We will run another hour, if it is necessary to finish tonight.

Q. (By Mr. Smith.) You felt that the equipment rental ought to be on the basis of 1.31, rather than on the 5 per cent on which it was computed?

A. That is the figure I used. I think that is correct.

5404 Q. In that suggestion do you give any consideration to the greater mobility in equipment which exists with reference to fixed property? Have you considered that element?

A. No.

Q. You did not make any addition here for contributive revenue, or did you?

A. No. Do you mean the revenue contributed by—

Q. The Western Lines to the Eastern Lines.

A. I testified with reference to that before, and I did not add anything on the subject.

Q. If you were going into that, would you take the net contribution and make it a reciprocal thing and weigh each one against the other, or would you just look at one side of the factor?

A. That depends on what the purpose was. What do you mean?

Q. The purpose being to be fair in making a proper allocation.

A. Of course, I did not add anything here because of the revenue contributed to another mortgage division.

Q. Do you happen to know—

A. I mentioned it in my previous testimony, but just what you mean by being fair in an allocation where I have not used it, I do not understand it.

5405 Q. You referred to it?

A. In this case?

Q. Yes, in this case, did you not?

Mr. Pantaleoni: I believe in the testimony at the last hearing he pointed out that as a contributive matter by the lines west.

The Witness: It works both ways, if that is what you want.

Q. (By Mr. Smith.) It works both ways?

A. Sure.

Q. You would look at both sides of the picture?

A. Yes, sir.

Q. Do you happen to know whether the General Mortgage gives more traffic to the lines on which the 5's of 1975 claim a lien than the traffic that the 5's of 1975 lines give to the General, or do you know how it breaks?

A. Unquestionably the 5's of 1975 give more business to the lines of the general.

Q. Just what are the figures on that?

A. Exhibit No. 145 shows the relative proportions of revenues to the east lines and west lines with respect to westbound and eastbound traffic. The other large property, of course, is the Terre Haute, where you have got certain movements, and if you look at your traffic density

5406 charts which are in this record, you will find the movement is all in the direction toward the lines of the Generals.

If you add those two things together you have unquestionably got a very much larger contribution by the 5's of 1975 group than the Generals.

Q. Are the figures in the record?

A. Absolutely all of them.

Q. Did you make any study of what the terminal expenses on deciduous fruit in Chicago were, for example?

A. No, I did not.

Q. Do you know whether the proportion that the lines east on this formula would get would be more than adequate to pay their Chicago terminal expenses?

A. I do not. I know your terminal expenses in Chicago are very high. I have got some figures on that generally, but not with respect to deciduous fruits specifically.

Q. Do you know whether the general mortgage would get one dollar back for one dollar paid out on traffic of this character through Chicago?

A. No, I do not. I have not studied it.

Q. Would not that be an appropriate subject for consideration in connection with your analysis?

5407 A. There are a lot of things which would be appropriate, if I had the time to spend on them, but, as I have already explained, I have not had. I would like to add, I think, that it would be equally appropriate—if I may add this to your question—

Q. You can add something to your answer, but not to my question.

A. Pardon me. I mean to my answer.

It would be equally as appropriate for the proponents of the showing to have made those inquiries before coming forward with a proposal to take the railroad of another fellow.

Mr. Smith: Mr. Director, most of this is not clear to me, but perhaps it is clear to the Commission, and on that assumption I will suspend.

Director Sweet: You may suspend on any assumption you want to. Any other questions of Mr. Parker?

Mr. Burgess: I will suspend on the assumption that it is not clear to the Director.

(Witness excused.)

Director Sweet: Call your next witness.

Mr. Pantaleoni: Mr. White.

5408 JOSEPH L. WHITE, was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Pantaleoni.) Mr. White, will you give your qualifications?

A. I was graduated from Harvard College in 1906 and entered railroad service immediately.

From 1906 to 1914 I filled various positions in the engineering, operating, purchasing and executive departments of the Grand Trunk and Wabash Railroads, and in 1914 went to the Chicago, Indianapolis and Louisville Railroad as Assistant to the President.

In 1915 I was appointed operating statistician of the

Union Pacific System. In 1917 I went to Washington with Judge Lovitt to assist him in organizing the War Industries Board and held the position of Chief Clerk of the Priorities Committee until May, 1918, when I became Assistant Manager, Operating Statistics Section of the United States Railroad Administration.

I remained with the Railroad Administration until 1922, occupying the position of statistician to Director General and in February, 1920, was made Assistant Comptroller.

In that position I had charge of the maintenance
5409 accounts in connection with settlements with several hundred railroads.

In 1922 and 1923 I acted as statistician to the Joint New England Railroad Committee, which was a committee appointed by the Governors of the six New England States to investigate the New England Railroad situation.

During the next two years, I was accountant on the staff of the Comptroller of Allied Chemical and Dye Corporation.

From January 1926 to January 1934 I was connected with the Irving Trust Company and its affiliate Irving Investors Management Company in charge of Research and also handling liquidation or reconditioning of the bank's investments in defaulted municipal and Railroad bonds.

In 1934 I went to Washington as Assistant to the Director of the Division of Transportation Loans of the Public Works Administration. This position involved the analysis of the financial position of railroads which applied to the Public Works Administration for loans and the value of collateral offered as security. These loans to railroads by the P. W. A. amounted to about $200,000,000.

In 1935 I was appointed Director of the Division
5410 of Transportation Service, Federal Coordinator of Transportation and occupied that position until June, 1936, when the office of Federal Coordinator expired.

Since that time I have been acting as Technical Advisor to the Protective Committee of the shareholders of the Old Colony Railroad Company, and since December 1936 have been acting as Technical Advisor to the Protective Committee for the Burlington, Cedar Rapids and Northern Railway Company, Consolidated First Mortgage Five Per Cent Bonds due April, 1934.

Q. In connection with your work as Assistant Director of the Division of Transportation Loans of the Public Works Administration, did you have occasion to analyze collateral offered as security by the Chicago, Milwaukee, St. Paul and Pacific?

A. Yes. This road offered as security its First and Refunding Mortgage Bonds.

Q. On what basis were these bonds accepted by the Public Works Administration as security for loan to the Chicago, Milwaukee, St. Paul and Pacific?

A. They were rated at par. The collateral loan was secured by an amount of these First and Refunding Bonds with par value equal to 115 per cent of the amount of the loan.

In other words, taking the bonds at par we had
5411 a 15 per cent margin of safety.

Q. Did you consider this loan amply protected on this basis?

A. I did.

Q. Have you had any reason to change your opinion since then?

A. No.

The $9,866,000 bonds of this issue outstanding are a first lien on 3435 miles of road at the rate of only $3,500 per mile. Included in this mileage is 1383 miles of main line west of Mobridge and 177 miles east of Mobridge, a total of 1560 miles of main line which are indispensable to the operation of the Milwaukee System.

Q. In this connection, have you made a study of the density of traffic on the mileage on which the First and Refunding has a first lien as compared with the density of those parts of the Chicago, Milwaukee, St. Paul and Pacific System on which the General Mortgage has a first lien over a period of years?

A. I have studied the Copeland density charts for the years 1928, 1931, 1933 and 1934 and the Divisional operating statistics of the railroad for the years 1928, 1929, 1930 and 1934, 1935 and 1936.

Q. Could you summarize the results shown in the
5412 Copeland Charts, starting with 1928?

A. They showed as follows:

In the year 1928 under net ton mile density for the First and Refunding, $1,264,868 and for the General Mortgage

$1,297,896 or a percentage figure of the First and Refunding of the General Mortgage of 92.

In the year 1931 this relationship had changed under net ton mile density from a figure of $855,090 for the First and Refunding to $1,019,801 for the General Mortgage or a per cent First and Refunding of General Mortgage of 84.

And the same relationship obtained in 1933, the figure under net ton miles of density, First and Refunding be $684,887 and under General Mortgage $813,868.

In 1934 under net ton mile density, the First and Refunding Showed $724,802 and the General Mortgage $852,691 or a per cent first and refunding of General Mortgage of 85.

In other words, in 1928, in the predepression days the density on the First and Refunding Lines was 92 per cent of that of the lines of the General Mortgage whereas in 1934, it had dropped to 85 per cent.

Q. What information did you secure from the Divisional operating statistics relating to density?

5413 A. These statements give detailed information as to traffic handled and cost of freight operations on undivided divisions and are about the best operating statements of the kind I have seen.

The principal point that interested me was the effect of decreased traffic on the relative unit costs on Lines West and Lines East (excluding the Milwaukee and Northern and the Chicago, Terre Haute and Southeastern). It should be borne in mind that in making these comparisons from the operating statistics, Lines East still include the sections on which the First and Refunding has first lien, although these sections have been included with the First and Refunding lines in the Copeland Charts.

The relative density and cost per net ton mile in 1928 and 1934 as shown by the operating statistics were as follows:

	1928	1934
Density		
Lines East (Excl. C.T.H. & S.E. and M. & N.)	1,340,000	835,000
Lines West	1,085,000	503,000
Per cent of Density of Lines West to Lines East	81%	60%

5414	1928	1934
Cost per Net Ton Mile		
Lines East (Excl. C.T.H. & S.E. and M. & N.)	0.960c	0.875c
Lines West	0.720c	0.805c
Per Cent Lines West of Lines East	75%	92%

This brings out the point that if the density of lines west can be increased through consolidation or otherwise traffic can be handled very economically over that section of the Milwaukee System, and an entirely different picture would be shown as to the contribution of Lines West to net earnings from that shown on Exhibit No. 181.

Q. When you were on the staff of the Federal Coordinator of Transportation, did you make further studies of the railroads in the Northwestern Region?

A. I did—particularly with respect to the thin traffic branch lines in that section.

Q. Were these studies incorporated in a report to the Federal Coordinator of Transportation which was subsequently published?

A. They were. The title of this report was "The Problem of the Thin Traffic Branch Line". It was published after the expiration of the Emergency Rail-
5415 road Transportation Act—1933—and was reproduced and distributed by the American Short Line Railroad Association.

Q. In preparing this report, did you make a study of Chicago, Milwaukee, St. Paul and Pacific branch lines?

A. I did.

Mr. Sparrow furnished me with analyses that had been made of a number of branch lines for which abandonment was under consideration.

I studied the general results on those branches as part of the broad study of the subject I was then making.

Q. What other angles of the Milwaukee situation have you studied?

A. While I was with the Federal Coordinator of Transportation and recently at the request of Mr. Osborn, I have studied the probable position of the Milwaukee in consolidation of the railroads in that section which might be expected in the future.

Q. What general plans for the consolidation of the

railroads of the United States and more particularly of the railroads of the Northwest between Chicago and the Pacific Coast have been given serious consideration by the Interstate Commerce Commission or other governmental authorities?

5416 A. Under the Transportation Act of 1920 the Commission was instructed to prepare a plan of consolidation of the railroads of the United States into a limited number of large system.

In the Commission's plan which was presented in December, 1929, the Chicago, Milwaukee, St. Paul and Pacific was left as one of the major systems in the Northwest with the addition of the Duluth, Misabe and Northern and some smaller lines.

In 1933 the so-called Prince Plan was worked out by Mr. John Barriger of the Reconstruction Finance Corporation. In this plan the railroads of the United States were to be consolidated into seven regional systems maintaining competition between principal centers. This plan was submitted to the newly organized agency, Federal Coordinator of Transportation for study and report.

On January 1, 1934, Mr. W. B. Poland submitted an exhaustive report to the Federal Coordinator of Transportation on the Prince Plan.

Mr. Poland's report was incorporated in the first report of the Federal Coordinator of Transportation, Senate Document No. 119.

In this plan System No. 5—Northwest System of the Prince Plan included the following five major sys-

5417 tems:

Chicago, Burlington and Quincy.

Chicago, Milwaukee, St. Paul and Pacific, (excluding the C. T. H. and S. E.):

Great Northern.

Northern Pacific.

Milwaukee, St. Paul and Pacific and Sault Ste. Marie.

Mr. Poland was assisted by the Regional Committees in the analysis of the savings that would result from these consolidations from the concentration of traffic on a few principal routes and the abandonment of sections of line not further required by the consolidated system.

To determine these potential savings the various lines of railway in the proposed systems were classified as follows, regardless of ownership:

1—Principal Routes.

2—Secondary Main Lines.
3—Branch Lines.
4—Abandonments.

The Western Committee, which made the above classification for System No. 5, was composed of the following railroad executives:

5418 H. K. Dougan, executive assistant to president, Great Northern Railway, St. Paul.

C. R. Harding, assistant to president, Southern Pacific Co., San Francisco.

H. R. Lake, general superintendent of transportation, Atchison, Topeka and Santa Fe Ry., Chicago.

H. E. McGee, executive vice president, Missouri, Kansas-Texas Lines, Houston.

It should be noted in passing that there was no official of the Chicago, Milwaukee, St. Paul and Pacific on this Committee.

The original reports of Mr. Poland and the three advisory committees containing maps and other supporting statements were available for reference in the office of the Federal Coordinator of Transportation.

Q. Mr. White, have you examined these original documents and made copies of certain maps and statements relating to System 5, Northwest System?

A. I have.

Q. Does Mr. Poland's report contain a map of System No. 5 of which the Chicago, Milwaukee St. Paul and Pacific was a part?

A. It does.

Q. Does this map show the classification of the main lines of the Chicago, Milwaukee, St. Paul and Pacific
5419 into the principal routes and secondary main lines of the proposed System No. 5 and the miles of Chicago, Milwaukee, St. Paul and Pacific main line and branches to be abandoned?

A. It does.

Q. Mr. White, you prepared a map based on this map in Mr. Poland's report?

A. I have.

Q. Is this the map?

A. It is.

Mr. Pantaleoni: What is the Exhibit Number please?

Director Sweet: No. 215.

Mr. Pantaleoni: I offer this map in evidence, or is it already admitted?

Director Sweet: Everything offered is admitted, unless there is objection to it and the objection is sustained.

(The document above referred to was received in evidence, and was marked as "EXHIBIT NO. 215, Witness White.")

Q. (By Mr. Pantaleoni.) Will you state briefly what this map shows?

A. It shows the classification of the lines of the Chicago, Milwaukee, St. Paul and Pacific System in
5420 System No. 5 between—

1—Principal Routes, marked in red.

2—Secondary Main Lines and Branches in fine black.

3—Abandonments, which are in green.

Q. Mr. White, have you made copies of statements in the report of the Western Advisory Committee on Railroad Consolidations with respect to abandonment of tracks of the railroads in System No. 5?

A. I have.

Q. Are these the statements?

A. They are.

Mr. Pantaleoni: Those are offered in evidence.

Director Sweet: No. 216.

(The document above referred to was received in evidence, and was marked as "EXHIBIT NO. 216, Witness White.")

Q. (By Mr. Pantaleoni.) What does the map—Schedule 1—show as to the classification in the proposed System No. 5 of the mileage of the main line between St. Paul and Seattle subject to the first lien of the First and Refunding Mortgage?

A. From Bowdle, which is at the end where the lien of the First and Refunding begins, the Milwaukee main line
is classified as a principal route to Terry, 317
5421 miles.

From Terry to Miles City, 41 miles; the Milwaukee line is paralleled by the Northern Pacific and Mr. Poland's Western Advisory Committee recommended that the Milwaukee Line be abandoned.

From Miles City to Sappington 342 miles, the Milwaukee Line is classified as a secondary main line.

Then from Sappington, Montana to Marengo, Washington—477 miles, the Milwaukee Line either alone or joint with the Northern Pacific is classified as a principal route, as explained in Exhibit No. 216.

From Marengo to Kittitas 127 miles, the Milwaukee Line runs through an arid unpopulated country, and the Committee recommended abandonment, as the operation of either the Great Northern or Northern Pacific routes would be more economical.

However it was pointed out that as this is the main line of the Milwaukee across a large part of Washington, there would be strong objections to abandonment.

For the purpose of this analysis, however, it is classified under proposed abandonments. The balance of the line from Mittitas into Seattle and Tacoma, however, was classified as a principal route.

Q. Have you made a similar analysis of the class-
5422 ification in System No. 5 Northwest of the main line of the Chicago, Milwaukee, St. Paul and Pacific between Bowdle and Chicago which is subject to the first lien of the General Mortgage?

A. I have.

From Bowdle to St. Paul, 353 miles, the Chicago, Milwaukee, St. Paul and Pacific main line is to be used as a principal route, marked in red.

From Chicago to La Crosse 129 miles, is to be used as a secondary main line—the principal route being the Chicago, Burlington and Quincy on the east side of the Mississippi River. From La Crosse to Chicago via Milwaukee the Milwaukee Line is classified as a principal route.

Q. Mr. White, please turn to your map—Schedule 2—and point out what other sections of mainline of the Milwaukee east of Bowdle are classified as Principal Routes in System No. 5.

A. The Milwaukee Line from Omaha to Chicago is classified as a principal route and the line from Aberdeen to Manilla on the Omaha-Chicago line.

Q. And the other lines east of Bowdle, some of which are subject to the first lien of the First and Refunding were classified in System No. 5 as Secondary Main Line or Branches?

5423 A. That is correct.

Q. Have you summarized the classification in System No. 5 of all of the mileage of main line and branches owned by the Milwaukee and divided this classification between the first lien of the General Mortgage, First and Refunding and the Milwaukee?

A. I have.

Q. Is this the statement?

A. It is.

Mr. Pantaleoni: This is offered in evidence, Mr. Director, to be marked Exhibit No. 217. Is that right?

Director Sweet: It will be No. 217.

(The document above referred to was received in evidence, and was marked as "EXHIBIT NO. 217, Witness White.")

Mr. Pantaleoni: That is marked "Classification of the Milwaukee System, miles of road owned in System No. 5, Northwest, Prince Plan, as set forth in the Poland Report."

Q. (By Mr. Pantaleoni.) Mr. White, does Schedule 3 give a summary of the classification of the lines of the General Mortgage and First and Refunding Lines in System No. 5 for all lines, both main lines and branches?

5424 A. Yes. It shows that out of a total of 4063 miles of main line on which the General Mortgage has a first lien, 151 or 37 per cent is retained in System No. 5 as principal routes and 2548 as secondary main line—as to the first and refunding—out of 1591 miles of main line 913 or 57 per cent is retained as principal route, 510 miles are classified as secondary route and 168 are abandoned.

Q. Then, viewed strictly as to their importance as parts of principal routes in a major consolidation of railroads in the Northwest, a greater proportion of First and Refunding main lines would be so used than of the General Mortgage main lines?

A. That is correct, as to main line in the classification of the Poland report of this system.

Q. What is the situation as to Branches?

A. As to branches, General Mortgage has 1963 miles of which 1859 or 95 per cent were retained in System No. 5 and 104 were abandoned.

The First and Refunding has 1839 miles of Branches of which 1578 or 86 per cent were retained in System No. 5 and 261 were abandoned.

Q. Then, as to branches, a somewhat larger percentage of General Mortgage branches were retained in System No. 5 than was the case with First and Refunding

5425 Branches?

A. That is correct.

Director Sweet: What happened to the Prince Plan, Mr. White?

The Witness: Mr. Poland reported on it, and I think it is quiescent at the moment. I do not know what the future will bring forth with all the talk of consolidations but it is the only major plan studied by a government agency that I know of.

Q. (By Mr. Pantaleoni.) Mr. White, please turn to the map of System No. 5 on the Poland Report and tell us what other principal routes are shown from the Pacific Northwest to St. Paul and Chicago in to the Milwaukee route which you have described.

A. The Great Northern Line is the principal northern route from the Coast to St. Paul. Then the Burlington route from Billings into Lincoln, and Kansas City is also shown, but the other main route really from the Coast to St. Paul is the Milwaukee-Northern Pacific Route, which I have described.

Q. The only other one is the Great Northern?

A. Yes, the Great Northern has the northern route and the two other lines have the Southern route, of which the Milwaukee has the larger part.

Q. So that in effect, the traffic now moving from
5426 the Pacific Northwest to St. Paul and Chicago via the three routes, Great Northern, Northern Pacific and Chicago, Milwaukee, St. Paul and Pacific, would be concentrated on two routes, the Great Northern and the Milwaukee, combined with the portions of line from the Northern Pacific, and the density of traffic over each of these two principal roads should be substantially increased?

A. That is correct.

Q. You heard the testimony this morning about the proposed consolidation with the other system?

A. Yes, sir, the North Western.

Q. Have you got anything to say about that?

A. In case of such a consolidation, I think the lines west of Mobridge would play an important part, because they would be the only outlet to the Coast of the two systems.

Q. Are there any further remarks which you care to make?

A. No.

Mr. Pantaleoni: That is all.

Cross-Examination.

Q. (By Mr. Burgess:) On Exhibit No. 217, Mr. White, as I understand this Exhibit, it shows under this plan somewhat more than 10 per cent of the mileage of the First and Refunding Lines would be abandoned, and
5427 no part of the General Mortgage Lines would be abandoned. Is that correct?

A. So far as the main line is concerned, but I might mention the fact that there is some qualification there as to whether they will abandon that line.

Q. What do you mean?

A. The 127 miles of main line across Washington, as shown on Exhibit No. 215, the committee stated that it would be doubtful whether they would ever abandon it, but I put it on.

Q. That is the part where, if abandoned, as shown on Exhibit No. 215, you would have two unconnected segments, would you not?

A. No, that is not the case.

Q. You would have two unconnected segments if you abandoned the lines in green, would you not?

A. So far as the Milwaukee is concerned, yes, sir.

Q. Yes, sir.

A. But of course, the traffic would be handled by the Great Northern or the Northern Pacific.

Q. So far as the General Mortgage Lines are concerned, Exhibit No. 215, you would have no unconnected segment, would you?

A. No, sir, that is correct, but it would be all in one system then.

5428 Q. Your conclusion from these studies, I assume is that by reason of that situation the First and Refunding Lines are more important than the General Mortgage Lines?

A. No, I did not draw that conclusion.

Q. What conclusion did you draw?

A. My conclusion is that they are important.

Q. I beg your pardon?

A. My conclusion is that they are important in the picture, more important than a segregation of earnings might show.

Q. That is, that the General Mortgage Lines are?

A. I say that the First and Refunding Lines, in case

of consolidation would be relatively more important then, if that were possible, by considering them as part of the Milwaukee System.

Q. That is in case of a plan like the Prince Plan?

A. That is correct, or the Milwaukee-North Western Consolidation.

Q. How about the plan approved by the Interstate Commerce Commission?

A. In that plan the Milwaukee was kept as one system.

Mr. Burgess: That is all.

Director Sweet: Any other cross examination?

(No response.)

5429 Director Sweet: Stand aside, Mr. White.

(Witness excused.)

Director Sweet: Are there any other witnesses?

Mr. Gilpatric: Mr. Director, I would like to recall Mr. Oliphant to ask him one question on this alleged error in his computation.

Director Sweet: All right.

C. E. OLIPHANT testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Gilpatric.) At the last hearing, and again today, reference was made by Mr. Parker to this error which is said to have been made in your computation of the earnings of the lines west in deducting from the net revenue as adjusted the gross intrastate revenue, resulting in an understatement of approximately $260,000.

Have you looked into that?

Mr. Pantaleoni: That was not the statement. The error resulted in only $87,000, I think.

Mr. Gilpatric: On page 1379 of the testimony the statement reads $260,000. I do not think it is important.

Q. (By Mr. Gilpatric.) In any case, have you looked into this matter, Mr. Oliphant?

5430 A. Yes, sir, we have looked into it quite thoroughly.

Q. Will you make an explanation?

A. We are satisfied that Mr. Parker must have misinterpreted our working papers, because in both cases the figures were net revenue figures, after switching absorptions and other deductions. There is no question that the figures

in the State Reports are always net revenue figures, and I have had two or three men check the thing and we are satisfied there is no error in the work, and I think if Mr. Parker would come out and examine our working papers again, we could convince him.

Mr. Gilpatric: That is all I have, but I do not mean by stopping at this point that the Debtor might not have answers to a number of suggestions made by Mr. Parker's testimony, but I do not want to go into those at this time.

Director Sweet: That seems to be all, Mr. Oliphant.

(Witness excused.)

Mr. Sykes: Mr. Lodge. This witness is presented on behalf of the United States Trust Company of New York as Trustee under the General Mortgage.

5431 A. E. LODGE was sworn and testified as follows:

Direct Examination.

Q. (By Mr. Sykes.) Give your name and occupation.

A. I am Auditor of Investment and Joint Facility Accounts of the Chicago, Milwaukee, St. Paul and Pacific Railroad.

Q. And how long have you occupied that position?

A. Since June 1, 1922.

Q. Mr. Lodge, a study has been introduced in evidence, Exhibit No. 145, showing the aggregate in the income of certain lines that are collectively referred to as the pieces east.

A. Yes, sir.

Q. Have you made a study to show a break down of the income attributable to those lines?

A. A study was made and an Exhibit was prepared in our Accounting Department, showing that break down.

Q. Was this paper made under your supervision, which I show you?

A. Under my supervision, no.

Q. But you are familiar with it?

A. I am familiar with it. It was made in our department, in the Accounting Department.

Mr. Sykes: I offer this in evidence.

5432 Director Sweet: Exhibit No. 218.

(The document above referred to was received in

evidence, and was marked as "EXHIBIT NO. 218, Witness Lodge.")

Q. (By Mr. Sykes.) I will ask you what this paper is which I show you now?

(Handing paper to witness.)

A. That is an Exhibit that was prepared under my supervision and in large part by myself personally.

Q. And refers to the same pieces which you spoke of?

A. It refers to the same pieces and some five additional pieces.

Q. And does that show their relation to the system and the data in connection with the acquisition of the lines?

A. Yes, sir, it shows data in connection with the acquisition of the lines and the reasons for the construction or acquisition.

Q. And these are correctly set forth on this paper?

A. They are.

Mr. Sykes: I offer this in evidence.

Mr. FitzGibbon: Before any ruling is made on that, I would like to be heard or have an opportunity to say something.

Director Sweet: It is identified as Exhibit No. 5433 219.

(The document above referred to was marked for identification, as "EXHIBIT NO. 219, Witness Lodge.")

Director Sweet: It has been offered, and if you have any objection to it, Mr. FitzGibbon, this is a good time to state it.

Mr. FitzGibbon: I have several objections to it, but I think what I will have to do is to bring them out by questions of the witness, and I think you would probably prefer that I do not interrupt Mr. Sykes' direct examination of the witness at this time.

Director Sweet: We will reserve ruling on the receipt of Exhibit No. 219 until you have had an opportunity to inquire.

Mr. Sykes: That is about all on direct. I will say that the United States Trust Company of New York as Trustee under the General Mortgage asserts a first lien as to the railroad properties which have been collectively designated as the pieces east and are enumerated in Exhibit No. 218. I do not know that it is necessary for me to repeat the designations of the particular pieces of property. This 5434 is based, Mr. Director, on the fact that it seems to have been taken for granted, and a number of wit-

nesses have spoken repeatedly in this case that these pieces are subject to the First and Refunding Mortgage as a first lien.

As a matter of fact, we assert our claim under the after-acquired property clause of the General Mortgage which specifically imposes a lien on all property described, generally now owned or after-acquired and appurtenant to the property described in the mortgage.

I want to place in the record that we assert a lien to the pieces of road, so that it may be submitted on the final submission.

I do not suppose your Honor wants to go into argument now on matters of the claim.

Mr. FitzGibbon: My point in connection with that is this:

I should like to ask Mr. Sykes, before I push my objection to the introduction of this Exhibit, as to whether or not it is his contemplation to have this lien questioned and determined by proper proceeding before the Federal District Court, or whether he is going to ask the Commission to be burdened with the determination of this question in these proceedings, and then to have the Commission
5435 rule upon it, and then perhaps have the Court rule upon it later?

To my mind, I should think it would be more expeditious, if this question has to be raised, to have it raised in the District Court, and to relieve the Commission and the Examiners of this burden.

Mr. Burgess: How can you allocate securities without passing on the lien?

Mr. Sykes: We find in the record an assumption, which I can show by another witness, that this has been passed along as a matter of routine. We call the Commission's attention to the fact that it is obviously in error, because our mortgage gives us a lien on this, and it has been taken all the time that that is our lien.

We call your attention to the fact that the mortgage gives us this lien. If there is any question about that, I may have to go into it, because how can these securities and notes be allocated unless we know the liens?

Do you dispute our first lien?

Mr. FitzGibbon: Yes, we do dispute it, but I think we can waive that question for the moment. I wonder, Mr. Director, if perhaps this is not the way to do it.

I really hate to ask the Commission to pass upon
5436 this matter, and I think the Commission could very well determine the value of these lands, but leave the legal question to be passed upon by the District Court. That is the way it is being done in the Monon matter.

Director Sweet: The question we are wondering about now is the admission of these Exhibits. Have you got any objection to them?

Mr. FitzGibbon: If I may bring it up to the last number, I wanted to ask the witness when he was asked to prepare this.

Commissioner Porter: I understand this is offered as evidence of what the claim is. Is that about it?

Mr. Sykes: That is it.

Mr. FitzGibbon: If it is that, I have no objection.

Mr. Sykes: The first exhibit already in evidence shows what those earnings are, so that if the earnings are attributable to property in which you have a first lien, it may be so treated.

The second Exhibit shows the fact, which I assume are undisputed, as to how these different pieces came into be-
ing, and what the physical connection of the rest of
5437 them is, because that may have some bearing in determining the question of the lien. I think the facts should be in the record. That is all.

I do not claim this is proof of the existence of the lien, but those are the pieces on which we have the lien, those are the facts on which we base it.

Mr. FitzGibbon: If Exhibit No. 218, is offered merely to show the value of these properties, broken up into various items, and with the statement on the record that a first lien is claimed on those lines by the General Mortgage, then that is one thing, but Exhibit No. 219 is presumably offered as a question of proof of the lien of this mortgage.

Now, what have we here in connection with this? We have got no statement with regard to when this right of way land was acquired. We have hearsay testimony throughout here. We do not know whether this secondary evidence is really admissible because of lack of primary evidence.

Take, for instance, the first item under the reason for construction or acquisition, and they quote from the annual report.

You can go over on page two and you will find under

item 13 certain property that has been constructed during the last receivership.

Now, during the last receivership income was cur-
5438 tailed during those proceedings, on behalf of the old General and Refunding Mortgage. There are so many items which I would have to go into in this matter, that if the Commission is going to admit this Exhibit No. 219, I must warn the Commission that I have got to urge a long adjournment so that I can examine not only the facts in the old receivership but the various trusts under the old Refunding and Extension Mortgage.

You will notice from sheet 3 that under item 19, there is claim for funds from sale of General and Refunding Mortgage Bonds. I think that is going to be a most complex thing to pass upon here.

Director Sweet: What is the basis of your objection to the Exhibit?

Mr. FitzGibbon: The basis of my objection to the Exhibit is this, that I cannot tell from looking at this whether or not any of this evidence is admissible. It does not state when these connections were made, what the situation was back in 1903, in connection with these lines, what lines have been abandoned.

Director Sweet: If you cannot tell us the ground of the objection, and whether the Exhibit is admissible or
5439 not, how are we going to exclude it from consideration?

Mr. FitzGibbon: I do not think my statement goes quite that far, Mr. Director, in connection with it.

I am here confronted with a statement that purports to summarize certain transactions—there are numerous ones—over a period of years. It is offered in connection with a claim of lien, and I ask an opportunity to have these basic materials offered here, because this is an incomplete record. It is most incomplete.

May I ask the witness, when you were first asked to get this material together?

The Witness: About a month ago.

Mr. FitzGibbon: About a month ago?

The Witness: Yes, sir.

Mr. Sykes: Of course, your Honor, this record is full of statements, and if we were to reject them and insist on primary evidence by the witness of such things, of which he had first hand knowledge, most of it would be out. They

have been very free in filling the record with statements, taking them as presumably accurate on their fact, and subject not only to cross examination, but to controverting
evidence. I only ask what these witnesses did testify
5440 to, and if he went through in detail, it would take a
great deal of time. Of course, it is proper to offer counter proof, but if the objection is seriously pressed and ruling were made in a court of law, the ruling would be that we can only offer such evidence as he knows at first hand, and if that were done, it would get rid of a lot of the record here.

This is perfectly harmless and leaves you perfectly free to contest it if you can.

Mr. FitzGibbon: Mr. Director, what I would like to present is my preliminary question as to whether or not the Commission desires to have these lien questions thrashed out in these proceedings. If the Commission feels that it does want to pass upon it, then I must have further time on this matter.

Director Sweet: I cannot tell you what the Commission wants, except to pass on matters which you present to us as they come, and to dispose of them in the light of the information which you give us. We have no wants otherwise.

Mr. FitzGibbon: Then I will have to assume that the Commission will take this Exhibit, and, therefore, I will have to press my point that no basis has been laid for the
offering of this secondary evidence, and the witness
5441 has not been qualified as to these materials before
their introduction, and I will have to take advantage of every technicality that I can, unless I can be assured of an opportunity to examine into the records not only of the railroad company, but into the report of the Trustee, and come down here and offer further proof on this question.

If, of course, this is offered merely as a statement of their claim without basis of legal proof in connection with it, then I can let it go, because then the Commission is not called upon to pass upon the question of the lien.

Mr. Smith: The offer, as I understand it—and I have had some part in this—is not so restricted. It is an offer of the Exhibit without reservation, and to make such use of it as counsel desires to make.

The fact is, your Honors, that it seemed to me that if this question of lien was to be decided here, as it must be

in order to promulgate a plan with division of these securities, that there might be some facts which should be before the Commission, and the Debtor was called upon to produce such facts as were in its records bearing upon this question.

Commissioner Porter: Now, for illustration, here I see a column where it says "No information found".

5442 We do not know about that. There has been so little explanation about this Exhibit that we do not know about it. We do not know where it was obtained, and so forth.

Mr. Smith: Your Honor, here is a situation of counsel objecting to an Exhibit on the ground that there is no foundation laid and that he does not know where this data comes from, and counsel who offered it has expressly stated that he was attempting to shorten the thing up, and the witness is here for full interrogation by anybody who wants to inquire where these facts came from, and what use was made of the facts in these instances where it says no record was available.

The objection anticipates all that.

There has been no effort on the part of counsel making the objection to ascertain what facts are shown there, and where they were stated there, what search was made, were not found.

Mr. FitzGibbon: Of course, I am confronted today for the first time, with something which was considered by these parties for a month, involving twenty-two transactions, and there is a lot of history in back of how these lines were constructed, and upon what rights of way,

5443 and what licenses were received from the States.

I think this would have to be the subject of detailed proof all the way through.

Mr. Sykes: Here is Mr. Lodge's detailed proof. The question of whether the lines were appurtenant to the railroad is here. It involves the nature of the acquisitions and the nature of the line. There is not any doubt about that.

Mr. Smith: We have seen Exhibits for the first time today, and we have seen Exhibits offered in the record of the hearing for the first time. This is the valuation engineer of the debtor. He knows about those facts, if anybody wishes to inquire about them.

Mr. FitzGibbon: It states here that the line was acquired in 1903, and in connection with the General Mort-

gage property, I think we would want to know what the situation was in 1903.

Mr. Burgess: Why not ask the witness? He has testified that this is correct to the best of his knowledge, and was prepared from information under his control.

Mr. Sykes: It seems to me that one connected with a railroad can testify to a thing as obvious as when a piece of railroad was constructed, although he was not present and saw it constructed, but one after another has testified generally and put in their statements as to the facts and the general history of the railroad, and they have been accepted freely, and of course, we know there is no real violation of the rules of evidence in having a witness connected with railroads state when lines were constructed. It cannot be seriously urged that we have to bring witnesses in who first saw the line constructed. This witness knows when the line was constructed. The very simple views stated in that regard simply bear on this one question as to when the line was abandoned to the railroad.

5444

Director Sweet: Have you any objection to this Exhibit except the column headed "Reason for Construction"?

Mr. FitzGibbon: I will have to ask some questions.

Q. (By Mr. FitzGibbon.) What did you state your position was?

A. Auditor of Investments and Joint Facility Accounts. I am also in charge of Valuation Work, and was formerly Valuation Engineer.

Mr. FitzGibbon: This goes into operating matters and I do not think the witness is competent to pass upon it, and I do not want to indulge in connection with this witness in matters as to which he cannot testify.

5445

Mr. Sykes: What kind of information did you put in as to the first lien that the first and refunding had on the pieces? It was done by no one having actual knowledge, but through a layman, and certainly here is the list and there is what it is. It is not half as bad as yours. This is coming very much closer than your testimony was. We are advancing all the way.

You show it is not a lien, but show it is property that is appurtenant to the railway.

Director Sweet: Mr. Lodge, were Exhibits Numbers 218 and 219 prepared from the records of the company?

The Witness: Yes, sir, they were, Number 219 was prepared from the records of the company, and which are prepared by me.

Mr. FitzGibbon: The records are not here and the Secretary is not here, so far as I know. Up until the present time no question of lien has been raised.

Mr. Sykes: No, because it was supposed to be very competent to show it by testimony of a lay witness.

Mr. Pantaleoni: It was conceded by everybody here.

5446 Mr. Sykes: It is not now, I would not talk about slip-shod proof.

Commissioner Porter: Would you question that the line from Rutledge to Muscatine, Iowa, was not constructed in 1903? That is what this Exhibit says. Do you gentlemen claim it was not?

Mr. Pantaleoni: I for one do not know anything about it.

Commissioner Porter: Do you claim it was not but in some other year?

Mr. FitzGibbon: We do not know what it is. It might be very wrong because the franchise might not have been gotten until later on.

Commissioner Porter: What franchise do you mean? What franchise are you talking about?

Mr. FitzGibbon: There might have been some necessary franchise in connection with that, or some easements.

Commissioner Porter: What difference would that make as to the lien?

Mr. FitzGibbon: I think it might be a very important question.

Director Sweet: I do not see any assertion made about any franchise here.

5447 Mr. FitzGibbon: Of course, I am just caught here at this time, bringing the lien in issue, and they attempt to bring it in and prove their title to the property, taking the Muscatine Line and showing an income of about $400,000. That would provide the issuance of about $8,000,000 of bonds.

Mr. Sykes: It is important. All right.

Nobody here claims that these lines are not appurtenant to the railroad, and no one claimed they were not owned at the time of the mortgage or thereafter acquired.

Mr. FitzGibbon: This is a matter that is not judged entirely by valuation on an accounting method, but there are operating questions in connection with this, operations in 1903 and operations now.

Director Sweet: I understand your objection goes both to Exhibits Numbers 218 and 219, does it not?

Mr. FitzGibbon: It really does not go to Exhibit No. 218, no.

Director Sweet: Just to Exhibit No. 219?

Mr. FitzGibbon: Just to Exhibit No. 219.

Director Sweet: All right.

The ruling is that Exhibit No. 219 will be received over the objection, as evidence of a claim to a certain lien
5448 or priority in this connection, and not necessarily as competent proof of the extent and nature of that lien.

We realize that it will be for the Court ultimately to pass on all questions of liens, and the Commission must make certain assumptions, of course, with regard to priorities in considering plans, but the questions as to relative liens and priorities are legal questions which certainly the Court must pass upon, no matter what the Commission says about them in these proceedings.

Mr. Sykes: How is the Commission going to rule on the equity in the allocation of securities unless it has at least a provisional classification of liens? It is not going back to the court to have a restatement of liens, is it?

Director Sweet: Necessarily, as I stated, the Commission will have to make some assumptions about what the relative rights of the security holders are, and if the Commission is erroneous in its assumptions about those things, the Court will have to correct it in this proceeding.

Mr. Sykes: Is there anything harmful in considering the wide range of latitude that witnesses coming in here have had who did not have first hand knowledge, but
5449 spoke from affidavit and records of things done under their supervision. Such ordinary facts as stated in that column, the time the road was acquired, and what the nature of its traffic was, et cetera, have been received, and are we now suddenly going to apply a very strict rule, when we have not been objecting to that kind of thing going in?

For example, the joint use of lines with other companies in the first line, providing a line 32 miles shorter. This witness looking at the record finds that was something done by the railroad. Some of these were short cuts and some were acquired because it was a convenient way of getting together, and one or two were mere feeders.

All those things appear in the record, and while they may not be conclusive proof, that is part of the historical picture of it, and this witness testified to some things, and

as to some of them if the rule is going to be applied strictly, as it would be in Court, with no secondary evidence, we will have to ask for a lot more witnesses.

But is not this becoming very meticulous about something about which we have been very free heretofore?

Do you object to our offering this as if this witness
5450 had testified to it?

You are perfectly free to controvert it or disprove it.

Mr. FitzGibbon: Yes, I am objecting.

Mr. Sykes: Then I will have to ask the witness when the different pieces were acquired, et cetera. That is too bad.

Mr. Smith: It is not inconceivable at all, that if the facts are not shown before the Commission here, and if we got before the Court and undertook to develop some of the facts, these gentlemen would tell us very vigorously, as is their fashion, that we should have made the record before the Interstate Commerce Commission, and that is where the record is made up, and they would say, "You are coming in pretty belatedly to try such facts before the Court."

Then the first figure may be found on Debtor's Exhibit No. 91, 76.3. That is on Exhibit No. 219. They went into the record in Exhibit No. 91, and no objection was made to that.

We propose to develop, for example, that the roadway miles were 76.30 by a construction of the record. And we come in with facts of the same nature, and in some in-
stances, there may be some difference, but those which
5451 we are offering in the succeeding column and those offered in the first column, while they may be slightly different, consist of the same type of information, and we are making up the record at the time these gentlemen will later contend we should have made it up.

We want the facts in the record, of course, and not merely here accepted as showing that the claim is made, but some of the facts which will be relevant in determining that claim.

I take it your Honor did not mean that when this Exhibit is in, and Mr. Lodge has been subjected to cross-examination, if counsel so elects, I do not think that your Honor means that we would not then have proved that the line from Muscatine to Rutledge was constructed in 1903, and may I ask your Honor for a construction of that ruling?

Director Sweet: I do not think, Mr. Smith, that you would insist on the Commission or the Court making a final

determination as to the question of priorities and liens on that kind of evidence, which is being offered here, would you?

Mr. Smith: If it is the only evidence that is before the Commission or the Court and it is relevant—we have not discussed the relevancy of this evidence. I think some
5452 of the facts are relevant, but the matter has got to be determined, and it has got to be determined on the best evidence which the parties bring before the Commission. I do not know how else it can be determined.

Director Sweet: If you insist on trying questions of priority and the nature and extent of liens, I guess you will have to try them by introducing evidence which will stand up under objections.

Mr. Smith: We think this does, and we offer it, your Honor, and offer this witness as a man who is able to state that these are the facts.

Mr. Sykes: These witnesses who have come here one after another have testified in a way that we have been quite willing, and the Commission has been willing to take it, and the rule as to primary evidence has not been meticulously enforced, and this is a new kind of rule which is being applied now, if it is applied.

The other witnesses have had no more acquaintance, personal acquaintance with the facts than this witness would have.

Mr. FitzGibbon: I think the Director put his finger on it when he says that this is not the sort of evidence which the parties would offer before the District Court in support of their lien.

5453 Director Sweet: You have heard the ruling. If you are not satisfied with it, you, of course, have the right of appeal to the Commission to review any determination made in this hearing.

Mr. Sykes: This Exhibit is admitted for that limited purpose?

Director Sweet: It is received in evidence as evidence of your claim.

(The document above referred to was received in evidence, and was marked as "EXHIBIT NO. 219, Witness Lodge.")

Q. (By Mr. Sykes.) Look at this Exhibit No. 219, the first item, the line from Muscatine to Rutledge, Iowa, with a mileage of 76.30. Do you know when that line was built?

Mr. FitzGibbon: The Witness has not been qualified yet on this, I do not think. I think perhaps you had better qualify the witness in connection with this.

Director Sweet: As I understand it, the witness has stated he is the Auditor of the Railroad, and he has taken this information from the records of the carrier. What else do you know about it? Anything?

The Witness: The records of the carrier show that 5454 it was constructed in 1903, and—

Mr. Pantaleoni: I object to the testimony. He was not with the company.

Were those records made under your supervision?

The Witness: No.

Mr. Sykes: We will have to get some other witnesses if your Honor is going to enforce that rule on us.

Director Sweet: He was stating what the record shows and I do not know why he can't state it. The Exhibit shows what the record shows, does it not?

Mr. Sykes: I am not sure on that ruling whether this Exhibit proves anything stated in there except that we claim it is true.

Commissioner Porter: I must confess that it seems to me that you have laid mighty little foundation for this as yet. That is the thing which is bothering me. This man has barely stated who he is.

For illustration, here is "Sale of Stock", and there was no showing here where that comes from or anything, as I understand it. Probably I would be inclined to let this in, if you would lay the proper foundation and show what this means.

Mr. Smith: The witness has got the record here 5455 from which he took that statement, if anybody is interested in inquiring about it.

Commissioner Porter: There is nothing here to show where he got it as yet. He has not said so.

Mr. Sykes: How was that statement made up, Mr. Lodge?

Commissioner Porter: That is, unless my recollection is in error. The basis has not been stated, if you will permit the suggestion.

Q. (By Mr. Sykes.) How was this statement made up?

A. It was made entirely from the records of the company, digging back into old records, minutes of meetings

of the Board of Directors, Valuation Department Records, Accounting Department Records, et cetera.

Q. What record, for example, would show how it was acquired? What record was used for that?

A. The first record which I found was from the minutes of the meeting of the Board where they authorized the officers of the company to construct the line and to pay for it from funds received from the sale of stock.

Mr. FitzGibbon: Have you the resolution here?

Commissioner Porter: Now, counsel, are you going to go that far?

5456 Mr. FitzGibbon: I have to, your Honor. Look at the position in which we are put. At the last minute we are brought up with a question involving about $10,000,000, and there is nothing more technical in the law than the subject of after-acquired property clauses. I have got to do that, and if we go through this we will be here about two weeks.

Mr. Sykes: Don't worry about that.

Mr. FitzGibbon: I do not think the question should ever be reported on in this proceeding, and I think the Director is right to allow this Exhibit as evidence of the claim, but not as primary evidence itself. I think it is an imposition on the Commission.

Mr. Smith: May I ask counsel a question? If this is accepted as showing an issue as to lease, may I inquire from counsel when he proposes to offer factual data to show that the first and refunding, if that is his position, has a first lien on these properties, or any other properties on which you claim the first lien?

Mr. FitzGibbon: There is this:

Up until now you will remember that the Debtor put in certain testimony here through Exhibit No. 73, which was not contested at the time and was presented July 30th,

5457 1935, and then at the last part of this hearing a cloud is being thrown upon our title. I do not see exactly why we should be the parties to raise this in the District Court, but if the Commission thinks that it would help them I would be glad to file a petition in the District Court, asking for a declaratory judgment on this question. I do not see really, why I should be the moving party, but if it will help the situation, I would be glad to do it.

Mr. Sykes: Do you dispute that any of these pieces were owned or acquired by the company? Do you dispute that?

Mr. FitzGibbon: I would like to see exactly how they were acquired, whether title went immediately to the company or went through trustees. We had a very difficult question in the last receivership.

Mr. Sykes: Do you seriously dispute that any of these pieces of railroad are those which have been acquired or owned by the Company? You do not dispute that?

Mr. FitzGibbon: I want to know how they were acquired.

Mr. Sykes: Or that they are acquired?

Mr. FitzGibbon: I do not dispute that they are with the property, no.

5458 Mr. Sykes: Do you dispute they are appurtenant to the railroad?

Mr. FitzGibbon: I certainly do.

Mr. Sykes: Then you can prove that on the record.

Mr. Burgess: Mr. Commissioner, I think that your Honor's suggestion was entirely correct and appropriate. I do not think this witness has been asked yet the question that is of real importance here, and that is whether or not all of the data shown on Exhibit No. 219 has been taken from the records of the Company now in existence.

Has it?

The Witness: Yes.

Mr. Burgess: Then I submit, under the recognized rules of the Commission this is clearly admissible, the witness having been presented for that purpose.

Mr. FitzGibbon: If it is offered as a question of legal proof as to the lien under the General Mortgage, then I want the basic data. I would want that, and I am entitled, I think, to have the basic data.

Mr. Sykes: I got as far showing what his testimony was, and he is proposing to state the source of that.

Now, I asked him further to refer to whether it was 5459 construction or acquisition. Down under that column, under the reasons for construction of acquisition are stated what are shown to be statements of fact. From what source did you get that statement?

The Witness: I got that statement from an annual report by the Board of Directors to the stockholders. I had expected to find it in the minutes of the meeting of the Board, and I searched there first for that, but I did not find anything as to the reason for construction.

Mr. FitzGibbon: I do not know whether the witness—

Commissioner Porter: Let him go ahead please.

Mr. FitzGibbon: This is the situation: I do not want to be in the position of having waived all this.

Commissioner Porter: The objection is now overruled. Let the counsel go ahead and lay his foundation, and we will determine whether we will receive it.

Mr. FitzGibbon: I object to all this on the ground that it is not the primary evidence, and no justification has been laid for secondary evidence, and it is incompetent and irrelevant on the ground offered.

5460 Mr. Pantaleoni: And it is on a matter not properly brought before the Commission.

Commissioner Porter: We will pass on that later. Go ahead with the proof.

Mr. Sykes: I asked you about all the things in the column headed "Reason for Construction or Acquisition", and I want you to tell me from what source the information stated in that column was obtained, or all the sources from which you obtained it. You need not give the description of every one, but enumerate all the sources which you have used.

The Witness: On sheet 1?

Q. (By Mr. Sykes.) On sheet 1, the column headed "Reason for Construction or Acquisition", way over to the right.

A. The information which I show on the first sheet all was obtained from the annual reports of the Board to the Stockholders.

There is one item on which I could find no information.

On the second one, the information either came from the records of the Board, or no information could be found, with the exception of the lines from Hayward to Hollandale, Minnesota. I have personal knowledge of that. I

5461 know why that line was constructed. I was with the Railroad Company and prepared the authority for expenditure, and accounted for the expenditures, and I know that of my own knowledge.

Item 17-A in that column headed "Reason for construction or acquisition" reads:

"To serve Java after revision of line between Bowdle and Glenham."

Then I found from a map that the line was changed, leaving Java some half mile or more off of the old line, and I found the connection that was constructed to reach Java.

Q. (By Mr. Sykes.) How did you determine the in-

formation which you stated in the column headed "Year constructed"? How did you determine the year constructed?

A. One source of that is the engineering records, which I have, or have had in my office in connection with Valuation. Then, also, I have the Accounting Report that was prepared by the Bureau of Valuation of the Interstate Commerce Commission in connection with Federal Valuation, and they all show the year constructed. That is part of the report of this Commission, an old report of this Commission.

Q. Is it true that more or less every one of those
5462 items, in the left hand column under "location" appear in those records which you have spoken of in the year mentioned?

A. Well, all of those lines appear in the year mentioned. Do you mean the Commission's report?

Q. Yes.

A. Yes, that is true.

Q. Now, there is a column headed "connections with lines subject to the lien of the General Mortgage" which purports to describe in a general way what the connection is in connection with the nature of the relation between the two lines. Where was the information contained in that next to the last column on each page obtained?

A. Generally it was obtained from the best records of the present situation.

Q. What records do you mean?

A. Most of them, or the first one, as an example, or the first two, a part of that would be obtained from the Valuation Records. That is the location of our lines and a general description of our property appearing in the Bureau of Valuation's Engineering Report.

I am in charge of our Joint Facilities and the use of
5463 the Davenport, Rock Island and North Western Lines mentioned there, and the Chicago, Rock Island and Pacific, which are joint facilities and come under my supervision. I handled the bills and I am thoroughly familiar with them.

Q. Speaking generally, then, all these, I believe you have testified, correctly represent contemporary statements, in fact made from the books of the corporation? Is that right?

A. Yes, sir.

Commissioner Porter: What about the column "Source

of Funds"? Where did you get the information contained in that column?

I notice, for instance, taking your first page of Exhibit No. 219, some say "Sale of Stock" and others say "Record not found". Where did you obtain that information?

The Witness: I got that from a report that was prepared by the Accounting Department, that showed first the expenditures for various periods, all of the expenditures for construction or acquisition of the lines of any property, and then showed how they were paid. That is, certain lines and the cost thereof were shown financed by the sale of stock, and otherwise, by certifying them to the Trustee of the General Mortgage.

5464 Commissioner Porter: Then I see under this column some entries like "Record not found". What do you mean by that?

The Witness: I mean that I could not find a record.

Commissioner Porter: In other words, in the records of the Debtor Company you were unable to find any record whatsoever indicating any thing to substantiate that. That is what you mean by that?

The Witness: I mean that so far I have not been able to; but I have not exhausted the possibilities.

Commissioner Porter: But you mean up to this time you have not found them?

The Witness: Up to this time I have not found them.

Commissioner Porter: Then, as I understand it, Exhibit No. 219 indicates that this is the fact, that this is an abstract of facts that you have gleaned from the current records of the company, and as preserved by them, by the Debtor Company in its offices in Chicago?

Mr. FitzGibbon: Your Honor, before he answers that, I do not see how we can ask the witness to answer that question, because I think he probably has reached

5465 many legal conclusions in connection with that.

Now, as I say, this matter—

Commissioner Porter: Where is there a legal conclusion in that phase of the question?

Mr. FitzGibbon: In "Sale of Stock", you cannot tell and must get the basic material and get the minutes to find out.

Commissioner Porter: I do not think "Sale of Stock" is a legal conclusion, but maybe I am wrong.

Mr. Pantaleoni: It is when applied to a situation like this.

Commissioner Porter: Let me ask this question:

Then, as I understand it, Exhibit No. 219 is an abstract of the facts which you have gathered and is a correct report of those facts as you have found them from the records of the Company. Is that much true?

The Witness: That is true.

Mr. Pantaleoni: This is his conclusion.

Mr. Sykes: The Witness stated that those were for contemporaneous entries, in answer to a question just before that.

May I ask this question:

In the column "How Acquired", in a number of
5466 cases the answer is "By construction". What do
you mean by that?

The Witness: It means it was constructd by the Chicago, Milwaukee and St. Paul Railway Company, with its forces or by contracts which it let.

Q. (By Mr. Sykes.) And the contemporaneous entries appear on the books?

A. Yes, sir.

Q. It was only in the cases in which it does not appear that it was aequired by construction, that the Company did not construct it itself, or built the railroad?

A. I do not get you.

Mr. Sykes: That is all right.

Commissioner Porter: What does counsel say about the next to the last line? I am rather impressed at first blush, that there are legal conclusions in that, looking at the second page.

"Connects with a line subject to the lien of the General Mortgage at Otis, Wisconsin."

Then it says "Does not connect with a line subject to the lien of the General Mortgage."

I am wondering if statements of that character might not be strictly legal conclusions.

Mr. Sykes: We will stipulate, under those circum-
5467 stances, that those words are to be construed as
stated by this witness to be subject to a lien. Of course, that does not prove the lien by itself. I had not noticed those particular words. I will stipulate that.

Commissioner Porter: That column would be offered simply to show the location of the line, and the connections, but he cannot, of course, state as to whether that connection is subject to a certain mortgage or is not, so subject.

Mr. Sykes: Certainly not. This is no evidence of being subject to a mortgage. The only proper way to show a line subject to a mortgage is to show that it is connected with a line that has some relation to a mortgage on this railroad system. That is all. It merely shows that it is appurtenant to the railroad.

Director Sweet: Do you not claim, Mr. Sykes, that all the pieces of line are lines which are described or enumerated in this Exhibit, are subject to the lien of some certain mortgage?

Mr. Sykes: Yes, sir. We are not offering this, or don't ask this witness to testify they are subject to the lien.

Mr. FitzGibbon: I think it can be connected up
5468 through Exhibit No. 73. We have not contested the lien of the General Mortgage on certain properties.

Mr. Sykes: I am perfectly willing in connection with that, that that line be connected with other lines of the railroad company.

Director Sweet: Do you not claim that the line from Muscatine to Rutledge, Iowa, is subject to some mortgage?

Mr. Sykes: Yes, we do. That is one of the pieces east.

Director Sweet: Subject to the First and Refunding Mortgage?

Mr. Sykes: We do not know whether it is subject to the General Mortgage as a lien by virtue of the clause in the mortgage which subjects to the lien of the mortgage all lines of railway now constructed or hereafter acquired.

Of course, the words "subject to the lien" no one disputes; as a matter of fact, these are the lines subject to the lien of the General Mortgage.

Commissioner Porter: I understood you to say what?

Mr. Sykes: You do not dispute that the lines with which these lines connect are subject to the liens of the General Mortgage?

5469 Mr. FitzGibbon: We do not want to examine that part of the case.

Mr. Sykes: He had no purpose in offering that. That line may be made to read "Connections with lines owned by the railroad company."

Mr. Smith: You limited your statement to seventeen lines and the other lines with which they connect are not part of the seventeen?

Mr. Sykes: The line there referred to the lines subject to the lien of the General Mortgage, and are the main lines.

speaking generally. These are pieces which tie up with that main line.

Of course, I am not attempting to prove by this that that main line is subject to the lien of the General Mortgage.

Mr. Freund: I would like to make an objection on the columns headed "Source of Funds" and "Reason for Construction or Acquisition."

I would think it ought at least to be shown on this Exhibit what stock was sold, when sold, or what authority it was sold, how much came from the stock, against which the construction cost applied, and where the rest of the money came from, if it was not exactly the same amount as those things enter into this question of lien.

5470 The source of the funds is the most important question on the question of lien, and there is nothing given here as to the amount, the date, or the authority.

Under "Reason for Construction", in some places it says "No information found", and in other places references are made to the annual reports.

Commissioner Porter: He has explained what he means by that, as I understand it.

Mr. Freund: If your Honor please, an annual report is not evidence of authority, and the authority must be in the resolutions of the Board of Directors, and those resolutions ought to be shown in support of these things. These are all conclusions.

Commissioner Porter: We will adjourn at this point until nine-thirty tomorrow morning, and then we will decide it.

(Whereupon, at 5:30 o'clock p. m. an adjournment was taken until 9:30 o'clock a. m. of the following day, March 22nd, 1938.)

5471 BEFORE THE INTERSTATE COMMERCE COMMISSION.

Hearing Room C.,
I. C. C. Building,
Washington D. C.,
Tuesday, March 22, 1938.

The hearing was resumed pursuant to adjournment at 9:30 o'clock p. m.

Before:

Commissioner Porter and
Director Oliver E. Sweet.

Appearances:

The same as heretofore noted.

Additional Appearances:

None.

5472 PROCEEDINGS.

Commissioner Porter: Come to order, please.

Mr. Burgess: Mr. Commissioner, may I have the record show that the Mutual Life Insurance Company of New York has become a member of the Committee of Institutional Investors. We have advice from Mr. Dwight S. Beebe, Vice President and Financial Manager and Mr. Haughton Bell, Assistant Financial Manager of that company, that the Mutual Life Insurance Company of New York, by official action, has joined our Committee in support of the plan presented by our Committee.

The Mutual Life Insurance Company of New York owns $4,400,000 of General Mortgage Bonds of the Debtor, and $1,263,900 of 5's of 1975.

You will recall that the record shows that this company declined to join in support of the stand-by plan, which was first presented by the Debtor, and acquiesced in by our group. This company now becomes a part of our group in support of the plan which we presented, and that brings the total holdings represented by our group to $88,839,900.

I assume there is no occasion for presenting a witness to prove that.

Commissioner Porter: No.

5473 Mr. Burgess: Thank you.

Director Sweet: This Committee supports the plan presented by the Group at the last meeting?

Mr. Burgess: Yes, this company joins with our group in support of that plan.

Director Sweet: Further consideration of the offer of Exhibit No. 219, marked for identification, and objections to it, results in the views of the Commissioner and the Director as follows:

The statement marked for identification as Exhibit No. 219 is offered as proof of the fact that 22 certain lines listed in the statement have become subject to the lien of the mortgage securing the General Mortgage bonds, of which the United States Trust Company is mortgage trustee.

The objection to its admission in evidence is based upon the ground that the statement represents the results of the witness' endeavor to present conclusions based in part upon his examination of records of the debtor and other data which he lists in the statement, and that he does not present the best available evidence of the facts, found in written records, upon which the necessary conclusions are based.

The question whether the lien of the mortgage at
5474 taches to the after-acquired property listed is primarily a judicial question for determination by the courts. In view of the objections made, the Commission should not and can not undertake to try the question at this time.

The statement will be admitted as evidence of the fact that the mortgage trustee asserts the claim that the mortgage covers the lines listed, but can not be admitted as evidence in support of that claim.

Mr. FitzGibbon: Let the record also show that the fifty year mortgage trustees claim a first lien on those properties.

Mr. Smith: If your Honors please, I am afraid that Mr. Sykes, counsel for the Trustee of the General Mortgage is under the impression that the hearing started at ten o'clock. I am just assuming that because he is absent. It was his purpose to call Mr. Douglass this morning of the Commission's staff. The only purpose of our committee is to see that a record is made here before the Commission on all points that are within the jurisdiction of the Com-

mission, and which the Commission should decide, which is adequate, and with that in mind, if your Honors please, and in the absence of Mr. Sykes, knowing what he intended to elicit from Mr. Douglass, I will call Mr. Douglass.

5475 Director Sweet: Come forward, Mr. Douglass.

G. S. DOUGLASS testified further as follows:

Direct Examination.

Q. (By Mr. Smith.) Mr. Douglass, I think you have been sworn and testified in this proceeding before, have you not?

A. That is right.

Q. You are on the Commission's staff in what capacity please?

A. I am Coordinating Engineer in the Engineering Section of the Bureau of Valuation.

Q. When you testified previously you said, did you not, that a report had been prepared by the Bureau of Valuation, under your direction and supervision, at the request of the Bureau of Finance, with reference to elements of value of the Debtor, and that that report had been offered in evidence as an Exhibit here?

A. In effect, that is what I said. Of course, certain parts of that report were not under my supervision, but certain parts were and I am entirely familiar with the entire statement.

Q. Yes. Are you familiar with and do you know the derivation of that part of the report which had to do

5476 with the assignment of physical properties to the mortgage liens?

A. Yes, sir, I was responsible for that portion of it.

Q. It is true, is it not, that the assignment of physical property to mortgage liens, which is made in that report, is the same, or practically the same, as that made by certain Exhibits produced by the Witness Sparrow for the Debtor?

A. That is true. We reviewed the Debtor's Exhibits Numbers 73 and 76, which were a statement of the various properties under each of the mortgages and the mortgage map, together with a study of such other information as was available, and from this consideration arrived at the

allocation shown in that statement, and it does follow the Debtor's allocations set out in that Exhibit.

Q. And is the allocation which you make, then, based upon the allocation made in those Exhibits?

A. Primarily, yes, sir.

Q. Did you, or did any member of your staff, under your supervision, or anybody in the Bureau of Valuation, undertake to interpret the after-acquired provisions of the various mortgages to determine any such independent interpretation as that of the mortgage liens, what they were, or should be?

5477 A. No, sir. With the information we had on hand, it would not have been possible, had we desired to do so, but we did not make any effort to settle legal questions.

Mr. Smith: That is all.

Mr. Gilpatric: Mr. Commissioner, may it be understood on the part of the Debtor, that the Debtor is not entering into this controversy as to the lien of these properties. The Debtor remains neutral, and I would like to point out that these Exhibits to which the witness referred and the testimony of Mr. Sparrow were prepared and given at a time when there was not any controversy over the liens.

The Witness: I might add that our data is in such shape if, at any time there is a desire, or a decision to change it, it would be very easily done.

Mr. Smith: I might say, although I suppose it is perfectly evident to the bench, that we thought it desirable to have some statement from the Bureau of Valuation as to the basis for the allocation, because of the provisions of the Act with reference to any report made by the Bureau of Valuation.

Director Sweet: Are there any other questions?

Mr. FitzGibbon: I have none.

Director Sweet: You may stand aside, Mr. Douglass.

(Witness excused.)

5478 Director Sweet: Are there any other witnesses?

(No response.)

Director Sweet: Are you gentlemen prepared to close the hearing?

Mr. FitzGibbon: As your Honor knows, I stated at the last meeting that in view of the situation occasioned by the Institutional Plan, the Trustees would consider calling a meeting.

I shall not go into the particular facts there, because

they have been the subject of a petition to the Commission, which the Commission has denied. It was, however, the feeling of the bondholders, at that time, that a committee should be organized and an adequate opportunity given to that committee to see what action, if any, should be taken on behalf of the bonds.

As your Honors also know, a committee has filed a petition with the Commission for authority to act in this matter on behalf of those bonds. However, that petition, under the circumstances, could not be filed until a short time ago, and obviously the Commission has not acted thereon.

Mr. Pantaleoni: If your Honor please, I would like to say just a word about the subject of adjournment. When the Institutional Plan was filed on January 10th, Mr. Osborn, an individual bondholder, at his own expense,
5479 went out and had made a preliminary survey of the facts before the Commission, and a preliminary survey of the underlying facts in the company's offices in Chicago.

As a result of that, I think we were able to show that the facts before the Commission are wholly inadequate to admit the preparation of any plan which will do justice to all classes of security holders.

We also satisfied ourselves that a type of survey which is necessary could only be made with the expenditure of much time and considerable money, more than an individual bondholder should, in fairness, be asked to throw into the pot.

As a result, since the close of the last hearing, we have endeavored to form a committee. That attempt to form the committee assumed considerable time and involved the calling of the meeting of the bondholders, which has just been referred to. The committee has been formed now, and that committee has its petition before you.

I have been informed that March 29th has been fixed as the date for hearing on that petition.

Now, that committee cannot function unless, one, it is authorized to function by the Commission; and, (2) unless it is successful in getting funds.

Unless it gets funds, it is impossible to make
5480 the survey necessary.

I think we are justified in asking for an adjournment for the further fact that, much as we would like to deny certain realities, it is perfectly evident from Mr. Scandrett's testimony yesterday, that the company cer-

tainly is not going to be in shape to come out of reorganization June 1st.

I think in one sense it is perfectly possible to dispose of the whole proceeding by saying:

"Well, we will simply wait until conditions stabilize."

I realize that the Commission has other ideas, and that they are intent on getting a plan out. I thing that the most the Commission can do is o allow sufficient time for that committee to function and make its survey.

I should think it advisable to grant an indefinite adjournment. If the Commission wishes to fix a definite date, I would say we should have at least four to six months.

Mr. Orschel: If your Honors please, we have a motion or petition pending before your Honors for a postponement of this hearing. I do not believe there is anything which I could add to the statement that has already been made
5481 yesterday. We were of course, fully aware that the Commission is anxious, and I think properly so, to press these matters to a conclusion. However, we feel, in the light of the changed financial conditions which have been testified to by Mr. Scandrett and which are so well known to all of us, that a further postponement of this hearing and deferring of action on the plan will not do any substantial harm to anyone, and, on the contrary, will probably give us all a better perspective on the situation.

I submit that the testimony which we have introduced in connection with problems of coordination—and I emphasize coordination rather than consolidation because we would like to consider both—give the Commission an angle at least on what there is available in this type of research, and I believe that the time which is necessary—

Commissioner Porter: We would have no authority to force any coordination, such as you are discussing, would we? Is not that a matter which has got to be purely voluntary and worked out by the carriers themselves?

Mr. Orschell: We call attention to the pressure, if you can call it that, which is being exerted these days in the public press, and the very fact that the President has
5482 called attention to this, and, as I understand, has selected certain members of this Commission to examine into the question, which gives us the thought that while this question is still open, it is a bad time to put through a plan, particularly when the plan presently before the Commission will completely eliminate a very substantial group of securities.

I think if I were just a little quicker yesterday when your Honor called attention to the fact that we were taking out about 43,000 people by such a service, I would have stated that there were probably almost that many stockholders in the two railroads who will be deprived of all rights, if this plan goes through.

We hesitate, of course, to cut down the service, as far as these people are concerned, but the recommendations which we have made do not deprive them of actual service, and there will be something to take the place of this railroad and the North Western, but if the plan goes through and the stockholders whom we represent are completely wiped out, I think a very serious harm has been done, and, for that reason, I again submit that this hearing should be postponed.

Mr. Gilpatric: Mr. Commissioner, may I state briefly again the position of the Debtor?

On the record as it is now before the Commission,
5483 reorganization is now practically impossible. I think the Commission itself in its recent decision in the Rate Case has recognized that the situation of this Debtor is not unique, but that there are other roads whose earnings at the present time are not sufficient to permit reorganization.

If this were an industrial enterprise, it might be closed down and liquidated, but not so with a railroad. The public interest demands that the St. Paul be continued. We think that the facts before you require that those members of the public holding junior securities and stocks should not have their interests cut down and eliminated because of the exigencies of this situation.

We therefore think that the proceeding should be continued until some solution is worked out, perhaps as a result of the efforts of the Commission itself, to which Mr. Orschel referred, or otherwise, and in the meantime we do not see that the interests of the security holders are adversely affected, since the record is clear that the property is being well run in the meantime.

If, on the other hand, the Commission decides to close the record, we submit that it should exercise its alternative jurisdiction under the Statute and should render its
5484 report and order, finding no plan is feasible and approving no plan at this time.

Director Sweet: Mr. Gilpatric, suppose you are right, just for the purpose of the question, in assuming that it is

not possible to make a practical plan for the reorganization of the Milwaukee at this time, should that question be decided by the Commissioner presiding at this hearing on a request for an adjourned hearing, or is it a question which goes solely to the merits of the entire proceeding to be decided by the Commission in the form of a report, one way or the other, about it?

Mr. Gilpatric: I think under the statute, the latter course is the only course open to the Commission, and I do not think you can make any decision here until the matter is closed. I think you can defer that decision by an adjournment or continuance. As I read sub-division (d) of the Statute, you can find one of two things upon this matter finally being submitted to you.

Does that answer it?

Director Sweet: If those who are presiding at the hearing should grant an indefinite postponement of the hearing, on pending plans, because they might think that this was not a proper time to reorganize the Debtor, would not
5485 that virtually be deciding the question which goes directly to the merits of the problem by assenting to an adjournment of that sort?

Mr. Gilpatric: I see what your point is. On the other hand, I do not feel that we can say now, or at any time, that we never can reorganize this railroad, and we all have hopes that before very long we are going to see the future more clearly than we do now, and we can perhaps avoid having a determination by the Commission that no reorganization is practicable, by a continuance.

I am not urging that, because we see ahead as far as July 1st, and we see a deficit facing the road then, and we do not see how we can reorganize with no earnings at all under the plans presented.

Director Sweet: Has anyone else anything to say on the question of closing the hearing at this time.

Mr. Burgess: If the hearing is closed, and when the matter of briefs is discussed, I would like to have an opportunity to make a suggestion about that.

Director Sweet: Requests which have been made for adjournment of the hearing are denied, and we will consider the time for filing briefs.

Mr. Burgess: I would suggest, your Honor, that
5486 on account of the extreme length and complexity of the record, that ninety days be allowed for filing

briefs. In that connection, I might say that the same group of Institutional Investors, substantially, that has presented a plan here, has presented a plan in the Chicago and North Western Case, which is now set for final hearing the 19th of April, and that group will, of necessity, be occupied during the next thirty days, so that that time would be unavailable for conference.

It is our practice in these cases to undertake, for the entire group, to consider the brief that is to be filed, so that it may represent that mass viewpoint, and it makes it a little more complex than the ordinary brief which we, as lawyers, sit down and write and file quite frequently without consulting those whom we represent.

So that I ask that a period of ninety days be allowed, if it suits the convenience of the Commission.

Director Sweet: Are there any others, who have suggestions regarding the filing of briefs?

Mr. Pantaleoni: I certainly do not think that the time for filing briefs should be much less than ninety days. This hearing has dragged on from 1935, and we have almost two years of earnings to explain and we have a deficit to explain in the future.

5487 Director Sweet: All parties will be entitled to file briefs on or before the 31st of May.

The hearing is closed.

(Whereupon, at ten o'clock a. m. of Tuesday, March 22nd, 1938, the hearing in the above entitled matter was closed.)

4540 INTERSTATE COMMERCE COMMISSION,
Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of transcript of the stenographer's notes of the hearing held August 5, 6, and 7, 1935, at Washington, D. C., in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the original of which is now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of May, A. D. 1940.

W. P. Bartel,
(Seal) *Secretary of the Interstate Commerce Commission.*

Filed Jun. 15, 1940, at 11 o'clock A. M. Hoyt King, Clerk.

5070 INTERSTATE COMMERCE COMMISSION,
Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Transcript of the stenographer's notes of the hearing held June 16, 1937, at Washington, D. C., and Exhibits No. 118 to 153, both inclusive, filed at said hearing; and

Transcript of the stenographer's notes of the hearing held September 20, 1937, at Washington, D. C., and Exhibits No. 154 and 155, filed at said hearing,

in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of May, A. D. 1940.

W. P. Bartel,
(Seal) *Secretary of the Interstate Commerce Commission.*

Filed Jun. 15, 1940, at 11 o'clock A. M. Hoyt King, Clerk.

2720 INTERSTATE COMMERCE COMMISSION,

Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of transcript of the stenographer's notes of the hearing held February 1, 2, 3, and 4, 1938, at Washington, D. C., and Exhibits No. 156 to 203, both inclusive, filed at said hearing, in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of May, A. D. 1940.

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

(Seal)

Filed Jun. 15, 1940, at 11 o'clock A. M. Hoyt King, Clerk.

5233 INTERSTATE COMMERCE COMMISSION,

Washington.

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of transcript of the stenographer's notes of the hearing held March 21 and 22, 1938, at Washington, D. C., and Exhibits No. 204 to 219, both inclusive, filed at said hearing, in Finance Docket No. 10882, Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 10th day of May, A. D. 1940.

W. P. Bartel,
Secretary of the Interstate Commerce Commission.

(Seal)

4510 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 23rd day of March, A. D. 1938.

(Caption—10882)

Upon consideration of the record in the above-entitled proceeding and the petition filed on March 23, 1938, by the Illinois Commerce Commission, for leave to intervene herein;

It is ordered, That the Illinois Commerce Commission be, and it is hereby, permitted to intervene and participate in the proceedings from this date, file briefs, present arguments upon the record now made, and be treated as a party hereto; and

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding.

By the Commission, division 4.

(Signed) W. P. Bartel,
Secretary.

(Seal)

4519 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 18th day of April, A. D. 1938.

(Caption—10882)

Upon consideration of the record in the above-entitled proceeding and the petition filed on April 18, 1938, by the State of Minnesota and the Minnesota Railroad and Warehouse Commission, for leave to intervene herein;

It is ordered, That the said State of Minnesota and the Minnesota Railroad and Warehouse Commission be, and they are hereby, permitted to intervene and participate in the proceedings from this date, file briefs, present arguments upon the record now made, and be treated as parties hereto; and

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding.

By the Commission, Division 4.

W. P. Bartel,
Secretary.

(Seal)

3783 INTERSTATE COMMERCE COMMISSION.

(Caption—10882)

Filed Nov. 5, 1938.

Submitted ..... Decided .....

Plan of reorganization for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, pursuant to section 77 of the Bankruptcy Act, as amended, recommended.*

Robert T. Swaine and Roswell L. Gilpatric for Chicago, Milwaukee, St. Paul & Pacific Railroad Company, debtor; O. W. Dynes, C. S. Jefferson, and M. L. Bluhm for trustees of debtor.

Kenneth F. Burgess, Douglas F. Smith, Paul V. Harper, George Ragland, Jr., D. R. Thomas, Harry Hoffman, Theodore E. Rein, Milton E. Mermelstein, Thomas F. Murphy, Jack E. Bagon, George L. Shearer, M'Cready Sykes, Meyer Abrams, Edwin S. S. Sunderland, Thomas O'G. FitzGibbon, E. D. Jones, Lewis A. Stebbins, John B. Marsh, Edward E. Watts, Jr., Julius Weiss, Sanford H. E. Freund, John A. Hill, Robert M. Becket, Paul W. Williams, Robert H. McRoberts, Thomas S. McPheeters, Jr., David M. Neuberger, James B. Alley, Russell L. Snodgrass, A. Marvin Braverman, Cassius M. Clay, Florence De Haas Dembitz, D. Willard, Jr., William J. Kane, J. T. Haslam, C. Francis Murphy, Joe D. Hughes, Albert K. Orschel, Victor Greiff, Fred N. Oliver, W. V. Hodges, Guido Pantaleoni, John E. Benton, Clyde S. Bailey, Donald J. Sherbondy, Harry W. Oehler, William S. Ervin, and Ralph Norgaard for interveners.

Other appearances: Malcolm Mecartney, Samuel W. McIntosh, Alice Cunningham Lacey, Henry T. Hunt, James L. Homire, and Donald McMillan.

Report Proposed by M. S. Jameson, Examiner.

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the debtor or the Milwaukee, on June 29, 1935, filed a petition with the District Court of the United States for the Northern Dis-

* Previous reports: 212 I. C. C. 150 and 225; 224 I. C. C. 219; 228 I. C. C. 180. Orders issued without report, (other than orders permitting interventions): November 21, 1935, June 23, and August 5 and 14, 1936; April 24, June 15, and September 15 and 24, 1937; March 12, 1938.

trict of Illinois, Eastern Division, stating that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization under section 77 of the act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended. Upon the filing of the petition the court entered an order approving the petition as properly filed, authorizing the debtor to continue in possession of the property, pending the appointment of trustees, and requiring new books of account to be opened as of midnight June 30, 1935.

Pursuant to the provisions of the statute, the debtor filed lists of all known bondholders, stockholders, and general creditors, and the court entered an order determining the manner in which claims and interests should be filed or evidenced, the date on or before which claims should be filed, and the division of creditors and stockholders into classes. Copies of these documents, together with petitions subsequently filed with, and orders entered by, the court, have been transmitted to the Commission by the clerk of the court, and are of record in the proceeding before the Commission.

By its order of October 17, 1935, after hearing, the court appointed Henry A. Scandrett, Walter J. Cummings, and George I. Haight trustees of the debtor. Objections to the ratification of these appointments were presented, a public hearing was held, and the appointments were ratified conditionally, by order of division 4 in this proceeding on December 28, 1935. 212 I. C. C. 150. The appointees assumed office January 1, 1936. Subsequently, division 4 fixed the maximum compensation to be paid to each of the trustees and their counsel. 212 I. C. C. 225.

The debtor filed with its original petition a plan of reorganization, dated July 1, 1935. By the provisions of section 77(d), after the filing of a plan, unless such plan is found to be prima facie impracticable, the Commission is required to hold public hearings thereon, at which any interested party may be heard, and to render a report
and order in which it may either approve or refuse
3784 to approve a plan. The plan approved may be different from any which has been proposed, but it must, in the opinion of the Commission, be fair and equitable, among other things afford due recognition to the rights of each class of creditors and stockholders, not discriminate in favor of any class, conform to the law of the land

regarding the participation of the various classes, and be compatible with the public interest. After due notice, hearings were held on August 5-7, 1935, June 16 and September 20, 1937, and February 1-4 and March 21-22, 1938. At the hearing in August, 1935, the debtor presented certain amendments of its plan, together with evidence in support of it. The evidence presented at the hearings in 1937 was directed principally to bringing the record of the carrier's earnings, obligations, etc., down to date. The hearings in 1938 were held primarily for the purpose of permitting the presentation of a plan of reorganization by the committee representing a group of institutional investors, an intervener, owning a large mount of the Milwaukee's securities. Evidence in support of and in opposition to such plan was introduced. The hearings were finally closed on March 22, 1938, and briefs were permitted to be filed on or before May 31, 1938.

In addition to the group of institutional investors, whose interests and activities in connection with the case will be described later, the interveners at the August, 1935, hearing were the Anglo-Continentale Treuhand A. G. and the Imperial Trust Company, Limited, owners of bonds of the Milwaukee & Northern Railroad Company, hereinafter referred to as the Northern, the United States Trust Company of New York, trustee under the general mortgage of the Chicago, Milwaukee & St. Paul Railway Company, hereinafter referred to as the old Milwaukee, Israel Abrams et al., owners of certain of the debtor's bonds, the Guaranty Trust Company of New York and Merrel P. Callaway, trustees under the debtor's 50-year mortgage, the Union Pacific Railroad Company, and Thomas E. Noonan, owner of certain bonds of the Chicago, Milwaukee & Gary Railway Company, hereafter called the Gary. Permission to intervene was granted at the later hearings, or by orders of division 4, to the independent committee for protection of the debtor's bondholders, the City Bank Farmers Trust Company, trustee under the mortgages of the Northern, the National City Bank of New York and William W. Hoffman, trustees under the debtor's convertible adjustment mortgage, the Chemical National Bank & Trust Company, trustee under the debtor's first and refunding mortgage, the St. Louis Union Trust Company and Illinois State Trust Company, trustees under the Gary mortgage, Thos. Wolstenholme Sons & Co., Incorporated, and Alfred Wolstenholme, owners of certain of the debt-

or's adjustment-mortgage bonds, the Reconstruction Finance Corporation, hereinafter called the Finance Corporation, the Railroad Credit Corporation,* the Director General of Railroads, the protective committee for the debtor's preferred stock, Victor Greiff, the Mutual Savings Bank Group, William Church Osborn, the Illinois Commerce Commission, the United States Treasury Department, the State of Minnesota, and the Minnesota Railroad and Warehouse Commission.

The above-mentioned committee for the debtor's preferred stock was authorized to act as such by order of division 4, in this proceeding on November 23, 1937. 224 I. C. C. 219. The authorized membership consists of H. C. Orton, D. C. Wolf, James B. Johnston, Karl A. Meyer, Rucker Penn, and Lynn H. Dinkins. The protective committee for the 50-year mortgage bonds was authorized on May 24, 1938, 228 I. C. C. 180, its members being E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, 3785 R. Harland Shaw, and C. Oliver Wellington. The latter order was issued subsequent to the close of the hearings and the committee has not intervened.

The Chicago, Terre Haute & Southeastern Railway Company, hereinafter referred to as the Terre Haute, has not filed a petition under section 77 and was not represented in the proceeding before the Commission.

Classes of Creditors and Stockholders.

Upon petition by the debtor, setting forth in detail the claims and interests of its known creditors and stockholders, the court, by an order entered July 6, 1935, divided the creditors and stockholders into 31 separate classes, and described four classes of obligations for which appropriate provision had been made in the plan, and which would either not be disturbed, paid in cash, or assumed by the reorganized company to the extent not previously paid pursuant to the orders of the court.

Classes Nos. 1 to 7, inclusive, represent the several classes of system bonds; classes 8 to 19, inclusive, represent the debtor's equipment-trust certificates of 12 series, ending with series N; class 20 represents the debtor's obligation under the sublease and agreement with the General American Tank Car Corporation; class 21, the debtor's secured notes to the Finance Corporation; class 22, the

* Withdrew from the proceeding subsequent to the close of the hearings.

debtor's secured notes to the Federal Emergency Administration of Public Works; class 23, the debtor's secured notes to the Railroad Credit Corporation; class 24, the debtor's noncumulative participating preferred stock; class 25, the debtor's common stock; classes 26 to 29, inclusive, the bonds issued by the Terre Haute and its controlled companies; class 30, claims which would have been entitled to priority over existing mortgages if a receiver in equity had been appointed, and other claims entitled to priority under acts of Congress relating to bankruptcy; and class 31, all other claims, obligations, and liabilities not included in the descriptions of classes 1 to 30, inclusive. The order stated that the foregoing division of creditors and stockholders into classes was without prejudice to the rights of such creditors and stockholders, and of the debtor, in any litigation or controversy in respect of the claims and interests represented thereby, in the event the debtor's plan of reorganization is not confirmed and consummated and such claims and interests disposed of in accordance with said plan.

The court has authorized the debtor to disaffirm several leases of property and from time to time has authorized extensions of the date for the disaffirmance of contracts. Extensions of time for the filing of claims were likewise granted. On March 6, 1937, the court entered an order appointing a special master, to whom claims filed with the clerk of the court were to be referred, and by a later order directed the special master to hold hearings with reasonable dispatch and report to the court the allowance and classification of claims.

The Transportation Properties.

The debtor's system extends from Chicago, Milwaukee, and other eastern termini to Seattle, Tacoma, and other points on the Pacific coast, with lines extending to Duluth, Kansas City, Omaha, Rapid City, Fargo, and many other cities. Approximately 11,115 miles of road are operated, in 11 States, of which mileage 9,906 miles of road are solely owned. The electrically operated lines are 658 miles in length. The grand total of all tracks operated is 16,625 miles. Including equipment used on the Terre Haute, the equipment owned as of December 31, 1936, comprised 1,260 locomotives, 56,309 revenue freight-train cars, 3,772 units of nonrevenue freight equipment, 980

passenger-train cars, and 6 units of floating equipment.

3786 The debtor was organized under the laws of the State of Wisconsin on March 31, 1927, and on January 14, 1928, took over the properties of the old Milwaukee, pursuant to authority granted by the Commission January 4, 1928, in *Chicago, Milwaukee & St. Paul. Reorganization*, 131 I. C. C. 673. Under the same date, the Commission issued its report in *Chicago, Milwaukee & St. Paul Investigation*, 131 I. C. C. 615, in which the history, management, and financial practices of the old Milwaukee, previous to the receivership in 1925, were described.

The old Milwaukee completed its line west from the Missouri River to the Pacific Coast in 1909 at a cost of more than $250,000,000. It acquired the property of the Northern, in 1893, subject to the lien of two mortgages. It acquired control of the property of the Gary, in 1922, subject to the lien of one mortgage. *Control of C., M. & G. Ry. by C., M. & St. P. Ry.*, 71 I. C. C. 124. The present Milwaukee acquired the Gary property in 1930, assuming obligation for the Gary's debts, including $3,000,000 of its bonds outstanding in the hands of the public. *Chicago, M., St. P. & P. R. Co. Acquisition*, 158 I. C. C. 770. The present Milwaukee's assumption of obligation with respect to the Northern bonds will be described later. The Northern and Gary companies have no longer any corporate existence.

The present Milwaukee acquired an interest in the Longview, Portland & Northern Railway, a part of the line of the Ontonagon Railroad Company, and parts of the La Crosse & Southeastern Railway. *Northern Pac. Ry. Co. Acquisition*, 175 I. C. C. 253; *Chicago, M., St. P. & P. R. Co. Acquisition*, 184 I. C. C. 103; *LaCrosse & S. E. Ry. Co. Abandonment*, 189 I. C. C. 785. Its interest in terminal companies, affiliated carrier corporations, and affiliated non-carrier corporations will be stated later.

The old Milwaukee acquired control of the Terre Haute by the purchase of capital stock and the execution of a lease for a term of 999 years from July 1, 1921, the rental reserved in the lease being the assumpton of the principal and interest of $19,154,000 of bonds issued by the Terre Haute and its subsidiaries, together with the payment of not exceeding $12,000 a year to cover the expense of maintaining the Terre Haute's corporate organization. *Acquisition of C., T. H. & S. Ea. Ry by C., M. & St. P. Ry.*, 70

I. C. C. 20. The lines leased embraced approximately 298 miles of main line, 39 miles of branch lines, and 13 miles of other main lines operated under trackage rights. This lease was acquired by the debtor in 1928.

Since the 1928 reorganization and prior to the institution of the present proceeeding, the Milwaukee, by permission of the Commission, division 4, abandoned various sections of its lines, aggregating more than 300 miles in length. Beginning in 1933, the company made studies looking to the possible abandonment of various other lines of light traffic, and has furnished statements for the record showing the estimated results of operating 43 segments of the system, aggregating approximately 3,400 miles in length. Between July 1, 1935, and June 3, 1937, 18.65 miles of first main line and 16.21 miles of coordinated operation were abandoned, and, as of the latter date, it has been decided that 73.36 additional miles of line and 44.31 additional miles of coordinated operation should be abandoned.

The report of the Bureau of Valuation on the elements of value of the system as of December 31, 1935, filed in the record by order of division 4, shows the miles of line owned and used by the debtor as 10,019.1 miles, and the miles of line owned by the Terre Haute as 360.2 miles. For the debtor, the original cost of the property owned, ex-
3787 cept land, was $694,263,606, the cost of reproduction new $818,280,465, the cost of reproduction, less depreciation, $546,341,054, the value of lands and rights $78,259,228, and the amount of working capital $7,727,300. For the Terre Haute, the corresponding amounts, omitting working capital, were $24,086,120, $27,994,556, $19,357,027, and $1,323,087. For the combined roads, the cost of reproduction new, less depreciation, plus the value of lands and rights and the above-stated amount of working capital, was $653,007,696. If to this sum be added the net additions and betterments reported by the carriers for the years 1936 and 1937, the total, as of December 31, 1937, would be $662,759,838. With the additions and betterments as computed by the debtor, the total would be $657,846,433. In preparing its report, the Bureau of Valuation adopted the debtor's statement of the property embraced under the lien of each mortgage.

The final rate-making value of the combined common-carrier properties, as found by the Commission, division 1, was $621,338,759, as of date of valuation, June 30, 1918.

To this the debtor adds the amount of additions and betterments between valuation date and June 30, 1935, adjusted for depreciation at stated rates, arriving at a total of $728,446,507. On brief, the debtor asserts that this valuation, brought down to December 31, 1937, would be $735,703,231.

As reported on April 30, 1937, the debtor's investments in the securities of affiliated companies included stocks having a total par value of $9,560,801 and a book value of $5,162,145, bonds having a face value of $4,290,000 and a book value of $1,497,801, notes in the total amount of $10,256,720, and advances of $5,393,647.

Present Capital Structure.

There is shown below, for purposes of comparison, a summary of the debtor's general balance sheet of May 31, 1935, or shortly before the filing of the petition under section 77, and that of December 31, 1927, which is the latest balance sheet of record.

	May 31, 1935	Dec. 31, 1937
Investment in road and equipment	$681,268,860	$691,592,842
Total investments	711,696,341	719,621,317
Cash	6,014,531	10,005,020
Total current assets	23,918,018	29,801,024
Deferred assets	2,804,933	3,841,830
Unadjusted debits	3,303,906	3,875,862
Total Assets	$741,624,198	$757,140,033
Capital stock	224,482,604	224,434,854
Governmental grants	162,825	544,920
Long-term debt	474,076,809	466,497,991
Total current liabilities	23,949,957	57,200,062
Deferred liabilities	49,216,007	73,996,613
Unadjusted credits	50,101,888	60,237,330
Corporate surplus (Def.)	80,365,892	125,771,737
Total Liabilities	$741,624,198	$757,140,033

As a part of the reorganization of 1928, the debtor assumed obligation in respect of the general-mortgage bonds of the old Milwaukee, the equipment-trust obligations dated prior to 1928, the four bond issues of the Terre Haute,

the Gary mortgage bonds, and the old Milwaukee's obligation with respect to the mortgages of several jointly owned terminal companies. The new securities issued in connection with the 1928 reorganization included bonds issued under the debtor's 50-year mortgage and adjustment mortgage, each dated February 2, 1925. (No first and refunding mortgage bonds were issued until 1934.) There was authorized an issue of 1,198,458 shares of new 5-percent noncumulative preferred stock, having a par value of $100 a share, and 1,174,060 shares of new common 3788 stock having no par value. The total capitalization was increased, but, as compared with the former fixed interest charges of $21,544,066 per annum, the new plan proposed fixed interest charges of $13,663,489, contingent interest charges of $9,143,685, and contingent sinking-fund charges of $1,139,368 per annum, beginning in 1936. The plan provided for the payment in cash of accrued interest on various old bond issues which were in default, of most of the debt to the Government, of the cost of new equipment, additions and betterments, working capital, and the expenses of the receivership and reorganization, all by means of advances from the stockholders approximating $70,000,000, for which new stock and 50-year 5-percent bonds were issued to the stockholders.

During the present debtor's regime, up to the close of 1934, the investment in road and equipment was increased by additions and betterments totaling $82,376,644, the net increase after retirements and conversions being $44,135,241. During the same period, the increase in total debt was approximately $36,000,000, not including the accumulation of interest on the adjustment-mortgage bonds.

The general-mortgage bonds of the old Milwaukee outstanding, all of which are due May 1, 1989, consist of $48,214,000 of series A 4-percent bonds, $8,950,000 of series B 3½-percent bonds, $42,597,000 of series C, 4½-percent bonds, $24,000,000 of series E 4½-percent bonds, and $15,000,000 of series F 4¾-percent bonds, a total of $138,788,000, principal amount, of bonds. The annual interest charges thereon are $5,952,255. In addition, there have been nominally issued and pledged, as part of the collateral security for loans from the Finance Corporation, $11,212,000 of series G 5-percent bonds. Following the filing of the debtor's petition under section 77, the court authorized the trustees from time to time to pay two-thirds of the interest due on the general-mortgage bonds up to Oc-

tober 1, 1936. This partial payment of interest, conforming to the plan which the debtor had proposed, evidently could not be continued because of lack of funds. As of December 31, 1938, the interest on the general-mortgage bonds, accrued and unpaid, will have amounted to $17,580,193.

As stated by the debtor, as of June 30, 1935, the properties subject to the first lien of the general mortgage included 6,044 miles of road wholly owned, lying east of the Missouri River, 11.3 miles of road jointly owned, various trackage rights, 1,030 locomotives, 24,690 freight cars, 885 passenger cars, and 2,013 units of work equipment not subject to the lien of equipment trusts, 7,000 shares of the capital stock of the Chicago Union Station Company, and certain cash. Subject to the lien of equipment obligations totaling $25,031,319, the general mortgage was also secured by a first lien on 119 locomotives, 32,441 freight cars, 79 passenger cars, and 26 units of work equipment. It appears that no equipment deficiencies have been incurred under this mortgage.

The first-mortgage 4½-percent bonds of the Northern are outstanding in the amount of $1,117,000, and the consolidated mortgage 4½-percent bonds in the amount of $5,072,000, both issues maturing June 1, 1939. In addition, $38,000 of the first-mortgage bonds and $20,000 of the consolidated mortgage bonds are pledged under the debtor's first and refunding mortgage. Although the Northern lines became the property of the present debtor through the reorganization of 1928, the obligation in connection with the bonds was not formally assumed until 1934, when division 4 authorized the debtor to assume obligation in respect of the principal and interest, at the same time authorizing the extention of the maturity of the bonds from June 1, 1934, to June 1, 1939. *Chicago, M., St. P. & P. R. Co. Bonds*, 199 I. C. C. 489. The June 1, 1934, maturity represented a previous extension from June 1, 1910, in the case of the first-mortgage bonds, and from June 1, 1913, in the case of the consolidated mortgage bonds.

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Under orders of the court, the trustees have paid all interest when due on the Northern bonds except approximately $247,000 of interest on certain consolidated mortgage bonds, the holders of which had not agreed to the last extension. The Northern first mortgage is secured by a lien on approximately 110 miles of wholly owned line and

16 miles of jointly owned line, lying between North Milwaukee and Green Bay, Wis., together with certain old cars. The consolidated mortgage is secured by a first lien on approximately 268 miles of line situated north of Green Bay, and by a second lien on the line south of that point. On the date of its acquisition by the old Milwaukee, the Northern owned 34 locomotives, 990 freight-train cars, 37 passenger-train cars, and 2 units of work equipment. At the time of the hearing in 1935 only eight cars remained in existence. The vacancies, which occurred since 1929, were estimated in excess of $2,000,000. Although some question was raised as to the meaning of the covenants of the Northern mortgages with respect to the maintenance of a specific amount of equipment, counsel for the debtor concedes that a default exists in this respect.

The debtor's equipment-trust obligations outstanding in the hands of the public on June 30, 1935, consisted of certificates of series A, C, D, E, F, G, H, J, K, and L, aggregating $24,011,000, principal amount. Certificates of series M and N were then held by the Federal Emergency Administration of Public Works in the amount of $1,537,000 and $120,000, respectively. The equipment-trust obligations of series later than A, C, and D represent the most modern and valuable equipment used on the system. As of June 30, 1935, the debtor was also obligated to pay $822,119 to the General American Tank Car Corporation, under a sublease of equipment, $62,200 to the Austin Western Road Machinery Company, under a lease agreement, and $50,866 to the Evans Products Company.

As of December 31, 1938, the debtor showed the principal amount of equipment obligations outstanding as $28,760,711, consisting of $17,048,800 of series A, C, D, E, F, G, H, J, and L certificates, $1,225,000 of series M and series N certificates, and obligations of $601,911 under lease agreements. On March 21, 1938, division 4 authorized the debtor's trustees to issue and sell $2,235,000 of series S equipment-trust certificates. *Chicago, M., St. P. & P. R. Co. Trustees' Equip.-Trust Certifs.*, 224 I. C. C. 669.

Since the beginning of the trusteeship the court has permitted the trustees to pay 20 percent of the amount of each maturing equipment-trust certificate of series A, C, D, E, F, G, H, J, K, and L, on the theory of the debtor's original plan, whereby the remaining payments would be extended to mature 20 percent annually in one, two, three, and four years, respectively. In the case of the equip-

ment-trusts of other series, all maturing certificates have been paid. No unpaid interest has accrued on any of the equipment obligations.

The so-called Terre Haute bonds include the Bedford Belt Railway Company first-mortgage 5-percent bonds due July 1, 1938; of which $250,000, principal amount, are outstanding in the hands of the public and $100,000 are pledged under the Terre Haute first and refunding mortgage, the Southern Indiana Railway Company first-mortgage 4-percent bonds, due February 1, 1951, of which $7,287,000 are outstanding, the Terre Haute first and refunding 3790 mortgage 5-percent bonds, due December 1, 1960, of which $8,056,000 are outstanding, $1,515,000 are pledged under the Milwaukee's first and refunding mortgage, and $2,000 are held in the treasury of the Terre Haute, and the Terre Haute income-mortgage, 50-year 5-percent bonds, due December 1, 1960, of which $6,336,000 are outstanding and $164,000 are held in the treasury of the Terre Haute. The interest requirements of the bonds outstanding under the four mortgages amount to $1,023,580 per annum, the payment of which constitutes the debtor's chief obligation under the Terre Haute lease. There has been no default in the payment of this interest.

The Bedford Belt mortgage constitutes a first lien on 4.66 miles of line, and the Southern Indiana mortgage a first lien on 240.92 miles of line, in Indiana. The latter mortgage is also secured by a first lien on certain equipment and capital stock, and by a second lien on all the property which is subject to the first lien of the Bedford Belt mortgage. The Terre Haute first and refunding mortgage is secured by a first lien on 115.17 miles of line, on certain equipment and capital equipment and capital stock, and by a junior lien on the properties of the Bedford Belt and Southern Indiana. The lien of the income mortgage is junior to that of the first and refunding mortgage. The equipment vacancies under the terms of the Terre Haute mortgages and the lease were estimated at about $5,000,000 as of June 30, 1935. As of December 31, 1936, the amount had increased to $6,832,556, and as of December 31, 1937, to $7,106,149.

The bonds issued under the Gary first mortgage include $3,000,000, principal amount, outstanding in the hands of the public, and $2,700,000 pledged under the Milwaukee first and refunding mortgage, the latter bonds not being guaranteed. The Gary bonds bear interest at the rate of 5 per-

cent per annum, are due April 1, 1948, and are secured by a first lien on 83 miles of line and certain other property. The accrual of unpaid interest on the bonds outstanding, as of December 31, 1938, will be $562,500. Nearly all of the equipment owned by the Gary when the property was acquired by the Milwaukee has been retired. The mortgage does not contain any covenant requiring the maintenance of equipment in any specific amount.

The bonds issued under the debtor's first and refunding mortgage aggregate $9,866,000, principal amount, of which $6,000,000 were pledged, along with other securities, as collateral security for loans from the Finance Corporation, $2,665,000 were pledged as collateral security for a public works loan, $258,000 were pledged with the trustee of equipment trust, series M and $943,000 are held in the treasury. These bonds are of series A, bear 6 per cent interest, and mature June 1, 1943. Subject to a judicial determination of the status of certain separate lines, referred to by the witnesses as pieces of lines east, this mortgage is secured by a first lien on 3,358.1 miles of wholly owned line, lying mostly west of the Missouri River, and 77.2 miles of jointly-owned line, on the leasehold interest under the Terre Haute lease, various trackage rights, approximately 144 units of equipment, and a large amount of the stocks and bonds of railroad and terminal companies. As of January 31, 1938, the trustee held $789,133 of cash, of which all but $2,000 represented interest and dividends paid on these securities. The mortgage is further secured by a second lien on all the properties with respect to which the debtor's general mortgage, the Northern consolidated mortgage, the Gary first mortgage, and the Bellingham Bay & British Columbia Railroad Company first mortgage represent first liens. It is further secured by a third lien on the properties under the first lien of the Northern first mortgage and the second lien of the Northern consolidated mortgage.

3791 At the hearing in March, 1938, the trustee of the debtor's general mortgage presented a list of the so-called pieces of lines east, asserting that these lines are subject to the first lien of that mortgage by virtue of its after-acquired property clause. According to the debtor's evidence the aggregate mileage involved is approximately 575 miles, while the trustee shows a total of approximately 645 miles, ostensibly based on the construction records. The list was admitted merely as evidence of the trustee's assertion with respect to the lien of the general mortgage.

The matter has a bearing on the question of the distribution of earnings as between the general mortgage lines and the first and refunding mortgage lines.

Among the blocks of stock pledged under the first and refunding mortgage are the stock of the Gary, the Terre Haute, and the Indiana Harbor Belt Railroad Company owned by the debtor. The Finance Corporation, through its witness, introduced testimony to show the high value of the stock of the latter company. Considering all the securities pledged under this mortgage and the sale value and salvage value of the western lines, the witness testified that the collateral pledged with the Finance Corporation is adequate, irrespective of the earning power of the lines subject to the lien of the first and refunding mortgage.

The first and refunding mortgage provides that equipment worn out and destroyed shall be replaced in a specified manner. The debtor estimated that the amount of all equipment vacancies on the system, as of June 30, 1935, was $13,994,174, of which approximately $850,178 represented the obligation with respect to equipment subject to the first lien and refunding mortgage, and practically all the remainder represented equipment subject to the first lien of the general mortgage. The debtor expected these deficiencies to increase materially.

Bonds issued under the debtor's 50-year mortgage aggregate $106,395,096 principal amount, bearing interest at the rate of 5 per cent per annum and due February 1, 1975. Included in this amount, as of June 30, 1935, were $426,317 of bonds held for issue for securities not yet presented for exchange under the 1925 plan. The interest requirements of the total issue are $5,319,755 per annum, and the accruals of unpaid interest, as of December 1, 1938, amounted to $20,835,706. The mortgage is secured by a second lien on the lines of railroad and other property subject to the first lien of the first and refunding mortgage, by a third lien on all property subject to the second lien of that mortgage, and by a fourth lien on all property subject to the third lien of that mortgage.

Under the debtor's convertible adjustment mortgage bonds in the amount of $182,873,693 have been issued, including $152,487 of bonds which, as of June 30, 1935, were held for issue for securities not presented under the 1925 plan. Interest on these bonds became cumulative from January 1, 1930, and the accruals thereof were $47,547,160 as of June 30, 1935, and will be $79,550,055 as of December

31, 1938. The lien of this mortgage is junior to that of the 50-year mortgage. The bonds have an interest rate of 5 per cent per annum and mature January 1, 2000.

The $301,000 of first-mortgage 5-per cent bonds issued under the Bellingham Bay & British Columbia Railroad Company first mortgage were due on December 1, 1932. They are owned by the debtor and are among the securities pledged with the Finance Corporation. They are secured by a first lien on 67 miles of line in the State of Washington and on a small amount of equipment.

Of the first and second loans made to the debtor by the Finance Corporation the balance due is $11,499,462.50.
3792 Interest at the rate of 5 per cent per annum has been fully paid on these loans. The Finance Corporation acquired, by purchase, $2,317,000 of 4-per cent collateral-trust notes issued by the debtor to the Federal Emergency Administration of Public Works, which obligation has been reduced to $1,711,000 by payments of principal, and all interest has been paid. The Finance Corporation also purchased from the Public Works Administration the series M and series N equipment-trust certificates outstanding on February 29, 1936. As of December 31, 1938, the amount of such certificates outstanding will be $1,225,000. The Finance Corporation purchased the certificates of series O directly, pursuant to the order of division 4 in *Chicago, M., St. P. & P. R. Co. Trustees' Equip. Trust Certifs.*, 212 I. C. C. 459.

Disregarding equipment-trust obligations, the aggregate indebtedness to the Finance Corporation is $13,210,462.50, and the collateral applicable thereto consists of $11,212,000 of the debtor's general mortgage series G bonds, $8,665,000 of its first and refunding mortgage series A bonds, $301,000 of the Bellingham Bay & British Columbia first-mortgage bonds, and the assignment of the debtor's advances to the Chicago Union Station Company in the amount of $3,110,861.

The maturities of the debtor's two notes to the Railroad Credit Corporation, originally issued in 1932 and 1933, were extended from time to time under orders of the court. As of December 31, 1937, the first note, in the amount of $2,000,000 had been reduced to $366,374 principally through distributive credits under the marshaling and distributing plan, 1931, and the second note, in the amount of $1,710,000 had been paid in full largely from the funds of the Milwaukee Land Company. Interest on the notes has been

paid when due. The emergency freight charges paid to the Credit Corporation exceeded, by $498,513, the distributions made to the debtor up to the close of 1937. The collateral remaining pledged for the first note consisted of (a) the distributive shares of the debtor under the marshaling and distribution plan, (b) 4,995 shares of the capital stock of the Milwaukee Land Company, (c) an agreement for the payment to the Credit Corporation of the operating profits of the land company and the subordination, to the claim of the Credit Corporation, of the claims of the debtor for advances to the land company for operating expenses, and (d) the debtor's equity in the collateral pledged with the Finance Corporation. The Commission has been advised that the claim of the Railroad Credit Corporation was fully liquidated as of June 27, 1938, and the pledged securities were surrendered to the debtor's trustees.

At the time of the filing of its original plan, the debtor reported a total of $20,284,913 of direct unsecured obligations and claims, including the estimated amount of $535,000 for the settlement of about $3,000,000 of personal injury claims. The debtor stated that, except about $500,000 of claims not entitled to priority, for which the plan made provision, all other claims probably would be paid in cash. Statements dated May 15, 1937, showed $4,335,304 as the estimated amount required to settle the general unsecured claims, and $415,806 as the estimated amount required to settle the claims not entitled to priority, both amounts being applicable to the period prior to June 30, 1935. The estimated amount of the claims not entitled to priority was revised, as of September 30, 1937, to $445,162.

A summary of the obligations and capital stock of the debtor and the Terre Haute, outstanding on December 31, 1938, is as follows:

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	Principal Amount	Interest accrued and unpaid	Total
Equipment obligations	$ 28,760,711		$ 28,760,711
Loans	13,210,403		13,210,403
Terre Haute bonds	21,929,000		21,929,000
Northern bonds	7,189,000	$ 247,290	7,436,290
General mtg. bonds	138,788,000	17,580,193	156,368,193
50-year mtg. bonds	106,395,098	20,835,706	127,230,802
Gary bonds	3,000,000	562,500	3,562,500
Adjustment mtg. bonds	182,873,613	79,550,055	262,423,748
General claims	445,162		445,162
Total debt	502,591,125	118,775,744	621,366,869
Preferred stock	119,307,300		119,307,300
Common stock	117,406,000		117,406,000
Totals	$739,304,425	$118,775,744	$858,080,169

1. Not including series-S certificates.
2. 1,174,000 shares of no-par common stock shown at $100 a share.

The debtor has no free assets of substantial value which are not pledged under mortgages or as collateral security for loans. Of the stocks of affiliated carriers owned, aggregating $8,630,801, par value, $7,842,954 in par value was pledged as of April 30, 1937, and all the bonds of affiliated companies owned were also pledged. The stocks of jointly-owned carrier companies, held by the debtor, include those of the Chicago Union Station Company, the Des Moines Union Railway Company, the Kansas City Terminal Railway Company, the Minneapolis Eastern Railway Company, the Minnesota Transfer Railway Company, the St. Paul Union Depot Company, the Davenport, Rock Island & Northwestern Railway Company, and the Indiana Harbor Belt Railroad Company.

The debtor has assumed liability, jointly with other companies, in respect of the principal and interest of $69,100,000 of bonds issued by the Chicago Union Station Company, $9,225,000 of bonds issued by the Indiana Harbor Belt, and $2,036,000 of bonds issued by the Minnesota Transfer. The agreements relating to the guaranty of $49,569,000 of Kansas City Terminal bonds and $14,945,000 of St. Paul Union Depot bonds, entered into by the old Milwaukee, were not expressly assumed by the debtor, although such agreements were not disaffirmed in the former reorganization and the debtor has continued to make the payments under such agreements.

The debtor owns the entire capital stock of the Republic Coal Company, Continental Telegraph Company, Excelsior Coal Company, and Milwaukee Land Company. The Republic Coal Company reports an original investment of $1,421,447, and net income during the five years 1932-36 ranging between $17,548 and $34,120. The Continental Telegraph is a small company which operated at a loss during the period mentioned. The Excelsior Coal is another small company, operating at a profit in some years. The Milwaukee Land Company, as of April 30, 1937, reported capital assets of $9,021,896 and total assets of $9,379,408, compared with total liabilities of $13,890,760, excluding a profit and loss debit balance of $4,511,352. It was indebted to the debtor on a demand note for $9,524,363 and owed $3,504,456 in interest on all notes and advances. The company's income accounts show a net deficit in each of the five years, the largest being $1,053,996 in 1934, and the smallest being $311,956 in 1936.

As of April 30, 1937, the debtor's advances to the Chicago Union Station Company amounted to $3,207,249, and the total amount advanced to all affiliated companies, excluding the Milwaukee Land Company, was $5,393,647.

3794 Traffic: Earnings.

By orders of division 4, there were filed in the record a report on the debtor's freight traffic and a report on its railway operating revenues other than freight, both prepared by the Bureau of Finance accountants. The first-mentioned report analyzes the debtor's freight traffic and the earnings therefrom during the period from 1921 to 1935, inclusive, and contains studies of the principal freight commodity groups, with data regarding trade and other conditions affecting the traffic. The following summary shows the distribution of the traffic by commodity groups in representative periods.

	Average annual tonnage				
	1921-27	1928-30	1931-34	1935	1936
Products of agriculture	7,251,900	7,244,400	5,262,000	4,945,400	5,395,411
Animals and products	2,467,300	2,500,900	2,080,800	1,502,200	1,837,068
Products of mines	16,536,500	18,035,700	10,348,000	10,184,700	12,797,624
Products of forests	9,071,600	6,932,900	2,330,200	3,568,700	4,602,752
Manufact. and misc.	8,992,600	12,370,900	7,373,800	8,890,100	10,954,281
Less than carload	1,743,000	1,423,500	731,500	501,900	646,086
Grand total tons	46,063,000	48,508,500	28,126,400	29,682,900	36,233,222

The debtor's total freight revenues and total railway operating revenues since 1927 were shown as follows in the reports of the company or its trustees to the stockholders:

	Freight	Total
1927	$127,804,440	$162,942,819
1928	136,226,422	170,554,899
1929	137,176,431	171,361,385
1930	115,638,093	142,569,632
1931	91,392,070	111,423,772
1932	70,302,779	84,900,833
1933	71,571,456	85,495,220
1934	73,382,543	87,859,792
1935	77,311,239	92,473,793
1936	91,560,382	109,142,086
1937	88,576,000	107,662,000

Commodities in which the traffic has largely recovered its pre-depression level include coal and coke, petroleum and its products, meats, flour and grain products, agricultural implements, and manufactures and miscellaneous. Except the last-named group, the traffic in coal and coke contributes the largest amount of revenue of any single class of commodities handled. The groups in which the losses of revenue between 1928-29 and 1936 were most pronounced were forest products, grain, livestock, clay, gravel, sand, stone, cement, brick, ore, and less-than-carload freight

The trend of the debtor's passenger revenues is indicated by the progressive decline from $26,916,000 in 1921 to $5,617,000 in 1934. Thereafter they increased, reaching $8,286,000 in 1937. All railway operating revenues, other than freight and passenger, remained fairly constant from 1921 to 1929, being $17,469,000 in the latter year. They then diminished to $8,224,000 in 1933, and increased to $10,800,000 in 1937.

At the hearings, the debtor's president outlined the history of the present company's operations, describing the major improvements on the property which had been made, the decline in operating revenues after 1929, and the deficits in net income which resulted. Reductions in salaries were inaugurated on ~~October 1, 1931~~. On February 1, 1932, a 10-percent wage cut went into effect under an agreement with the Railway Labor Executives Association. Borrowings from the Finance Corporation were begun. In 1933 a further reduction in salaries was imposed and the wage cut was continued under a further agreement with the labor executives. The wage cuts and reductions in salaries less than $400 a month were restored in installments, beginning July 1, 1934, but the other reduced salaries were continued until November 1, 1936, when a partial restoration was made. Total railway operating revenues increased in 1934 over the preceding year by $2,364,572, but a net income deficit of $16,247,621 was incurred, and at the close of the year the accumulated net income deficit, giving effect to the accrual of interest on the adjustment-mortgage bonds, amounted to $56,291,623. The accrual of unpaid in-
3795 terest became a matter of serious concern to the management, which was also confronted with the fact that no bonds could be drawn down under the first and refunding mortgage, in order to reimburse the treasury for

capital expenditures, until the deficiencies in equipment replacements under the covenants of the mortgages executed in connection with the 1928 reorganization had been made good. Under these circumstances there was no available means of financing, even if a substantial restoration of earning power should occur. A surplus of equipment developed, due to the falling off of traffic. As worn-out cars were retired, the deficiencies of equipment under the covenants of the mortgages increased, and these were not satisfied by the purchase of new equipment under equipment trusts. Consideration was given to the matter of a revision of the company's mortgages and capital structure as early as the latter part of 1932, and in August, 1934, a special committee was appointed by the board of directors to study the situation and submit recommendations. Conferences were held with representatives of the Finance Corporation, from which a further loan was obtained. The earnings of the system continuing to be unsatisfactory, the board of directors, on March 25, 1935, caused the officers of the company to prepare a plan to meet the situation. Working with the special committee and with counsel, and conferring with representatives of certain large insurance companies, banks, and other institutions, the company formulated the plan of reorganization hereinafter described.

Between 1934 and 1935, railway operating revenues increased 5.3 percent but operating expenses increased 9.7 percent, due largely to the wage restorations and the increased cost of maintenance. In 1935 the net railway operating income was $4,723,983, and the net income deficit $8,865,064, before interest on the adjustment mortgage bonds. The total revenues of 1936 were $109,142,086, or 18.1 percent in excess of those in 1935, while operating expenses increased by 11.6 percent. The net income deficit in 1936 was $4,052,424, before interest on the adjustment mortgage bonds. Tax accruals increased from $5,992,000 in 1935 to $8,135,000 in 1936. In 1937, with revenues and operating expenses slightly greater than in 1936, the net income deficit increased to $5,077,586, before interest on the adjustment mortgage bonds. The amount of funded debt outstanding was increased in 1937 by $7,753,000, from the issue of equipment-trust certificates of series P, Q, and R, there being a net increase of $4,507,136. The financing of these issues was accomplished on very favorable terms. Large expenditures were made for air conditioning of cars and many other improvements.

The debtor's president estimated that the effect of the rate increases authorized by the Commission in Ex parte 123 would be an increase of $5,330,621 over the total revenues of 1937, assuming no loss of traffic. Testifying in March, 1938, and assuming that the increase in interstate freight rates would become effective April 1 and in intrastate rates May 1, he presented a tenative estimate of revenues and expenses during the first half of 1938 which indicated a net railway operating income deficit of $452,000, as compared with $4,361,639, net, in the previous year, and a deficit of $30,000 in the income available for fixed charges, as compared with $5,027,659 earned in the previous year. The amount of cash on hand on January 31, 1938, was $9,630,625. Even with a substantial curtailment of the maintenance and improvement program it was thought that the cash on hand would be reduced to about $3,000,000 by the end of June, 1938. The president stated that such amount was about the minimum with which operation could be conducted.

The testimony shows the various measures taken by the company since 1928 to improve the efficiency of operation and the satisfactory results obtained with respect to the cost of repairs to freight cars, locomotive performance, the use of treated ties, the installation of tie plates, the method used for lengthening the life of rails, permanent improvements on bridges, and the maintenance of track and 3796 bridges. Between 1928 and 1935 the number of personal injuries on the system was greatly reduced. The unit cost of conducting transportation was materially less than during the period between 1921 and 1927. Several locomotive repair shops were discontinued. The number of operating divisions was reduced from 28 in 1927 to 15 in 1935. New contracts for the purchase of electric power were negotiated in 1929, resulting in substantial savings. Savings were also made in the cost of accounting. The matter of the abandonment of unprofitable branch lines already has been mentioned.

The debtor's president asserted at the 1935 hearing that there was no deferred maintenance on the property requiring additional expenditures. At the hearing in March, 1938, he testified that the condition of the roadway, structures, and equipment was excellent, and as good as at the beginning of the depression in 1930. The debtor's improvement budgets for the years 1935, 1936, and 1937, were approved by the court.

In the brief filed in behalf of the debtor, the earnings of the system in each year from 1910 to 1937, inclusive, were stated. The earnings for the period covered by the evidence, are shown below.

Income available for payment of interest.

	As reported by carrier	As modified by committee
1921	$ 7,985,488	$ 8,801,859
1922	13,222,720	14,506,448
1923	20,379,860	23,339,726
1924	18,992,891	20,398,452
1925	16,846,185	19,126,107
1926	18,369,990	21,128,190
1927	14,189,866	17,805,810
1928	30,671,632	32,885,369
1929	29,105,102	31,354,184
1930	17,938,346	20,298,074
1931	9,202,933	11,384,238
1932 Def.	232,590	2,680,530
1933	8,628,145	11,185,699
1934	6,719,954	8,831,558
1935	4,905,940	5,213,501
1936	9,706,089	12,298,916
1937	8,687,380	

The amounts shown as reported by the carrier represent incomes available for fixed charges, less rent for leased roads (largely the rental paid for the Terre Haute), and amortization of discount on funded debt. The amounts stated by the committee represent the adding back of the Terre Haute rental, and with respect to the years 1931 to 1935, inclusive, certain modifications of the charges to depreciation and retirement of equipment, amortization of debt discount, taxes due to the State of Washington, and charges under the Railroad Retirement Act not actually incurred.* It is stated in the debtor's brief that neither the accuracy nor the propriety of these adjustments is questioned.

The report of the Bureau of Accounts of the Commission on its accounting investigation of the net income of

* The committee considered it improper to include any railroad retirement or social security taxes on a retroactive basis.

the carrier, filed in the record by order of division 4, shows the net income available for payment of interest adjusted (a) for accounting not in conformity with the accounting regulations, (b) to include income items entered in profit and loss by permission of the Commission, and (c) by giving retroactive effect to new legislation and current regulations governing accounting for depreciation of equipment. The resulting amounts of available income are shown as $14,831,336 in 1930, $6,792,857 in 1931, $1,082,596 (deficit) in 1932, $7,602,224 in 1933, and $4,561,786 in 1934. Eliminating the retroactive effect of Social Security and Railroad Retirement taxes the amounts would be $19,391,845, $10,424,895, $1,602,474, $10,088,545, and $6,522,072, respectively.

3797 Under the requirements of the first Railroad Retirement Act; the debtor entered a charge of $746,043 in 1934 and canceled it by an offsetting credit of the same amount in 1935. The charge made in 1936 in connection with the Railroad Retirement and Social Security Acts was $2,046,131, and that for the first half of 1937 was $1,479,263, partly estimated. The debtor estimated that the payment of taxes in connection with these acts would aggregate $2,647,539 in 1937, $3,366,435 in 1938, $3,488,114 in 1939, $3,769,790 in 1940, and $3,896,721 in 1941, all based on estimates of the amount of the payrolls in those years.

The debtor also furnished an estimate of the amount of the future taxes payable under the Revenue Act of 1936, based on an assumed rising trend of earnings, showing that no income tax or surtax would accrue in 1937 or 1938, that the amount in 1939 would be $225,113, in 1940 $1,103,681, and in 1941 $2,040,997.

The emergency freight charges earned by the debtor under Ex parte 103 amounted to $1,712,793 in 1932 and $1,385,919 in 1933. Those under Ex Parte 115 were approximately $1,591,282 in 1935 and $2,660,528 in 1936.

The amount of the reductions in the salaries and wages paid by the debtor was $4,312,506 in 1932, $4,418,418 in 1933, $4,191,322 in 1934, $853,270 in 1935, and $208,398 in 1936, a total of $13,983,914.

Debtor's Plan of 1935.

The treatment of existing obligations proposed in the debtor's plan of July 1, 1935, as modified on August 5, 1935, may be summarized as follows:

Equipment-trust certificates of series A, C, D, E, F, G,

H, J, K, and L were to be extended so that they would mature 20 percent on the present dates of maturity and 20 percent annually in one, two, three, and four years, respectively, from the present dates. Obligations incurred in connection with the acquisition of equipment which were to be left undisturbed included those under agreements with the American Tank Car Corporation, the Evans Products Company, and the Austin Western Road Machinery Company, equipment-trust certificates of series M and N, and the note given to the Federal Emergency Administration of Public Works (since transferred to the Finance Corporation).

The plan provided for the extension of the debt to the Finance Corporation, amounting to $11,499,462.50, for a term of 10 years, with interest at the rate of 4 percent per annum, without change in the collateral deposited for the existing notes. Additional loans for general corporate purposes, up to a total of $12,000,000, were contemplated, as well as purchases by the Finance Corporation of not exceeding $12,000,000 of equipment obligations. The Finance Corporation conditionally agreed to this plan, but later canceled its commitment.

The debtor also proposed to extend the notes to the Railroad Credit Corporation, then aggregating $2,974,544, for a period of 10 years, with interest at the rate of 4 percent per annum, and with certain changes in the collateral pledged.

It was proposed to extend both issues of the Northern's bonds to June 1, 1949, at the present rate of interest, and to modify both Northern mortgages so that defaults which occurred prior to June 30, 1935, should be waived. The chief default under the provisions of the mortgages was in the matter of replacement of equipment. Objection 3798 to the proposed treatment of the Northern bonds was made in behalf of certain interveners representing the owners of bonds which had not been extended to June 1, 1939, under the agreement proposed on March 14, 1934, these interveners contending that the matured bonds should be paid in cash. By an order entered December 3, 1937, the court authorized the debtor's trustees to pay the owners of the unextended bonds the sum of $50 for each $1,000 of bonds, provided the holders agreed to the extension to June 1, 1939. The record does not disclose the outcome of this arrangement.

The plan provided that the maturity date of the first and

refunding bonds, all of which are either pledged or held in the treasury, would be extended from June 1, 1943, to June 1, 1958, and the mortgage modified so that all defaults would be waived. The debtor expected that this mortgage would provide a partial means for future financing and that up to $25,000,000 of new bonds could be issued from time to time against the capital surplus resulting from the reduced capitalization proposed.

The $138,788,000 of general-mortgage bonds outstanding would remain undisturbed under the plan, as to lien and maturity, but the payment of one-third of the interest thereon would be made contingent upon earnings for 10 years, such part of the interest being fully cumulative, and provision being made for its becoming fixed if earned during certain consecutive periods. Certain modifications of the mortgage were proposed, including a provision that no dividends should be paid on any class of stock except out of earnings remaining after the application of available net income to purposes that were specified. The debtor had attempted to frame a plan under which total fixed charges would approximate $6,000,000 a year, but it was found that such a plan would mean cutting deeply into the interest on the general-mortgage bonds. A reduction of the rates on the several series of these bonds, so that the rate on any series would not exceed 4 percent per annum, was not found to be feasible.

The $106,395,096 of 50-year mortgage bonds and the $3,000,000 of Gary bonds outstanding were to remain undisturbed as to lien and maturity and the mortgages were to be modified. The payment of interest on both groups of bonds was to be made contingent upon earnings, but fully cumulative, and if the accumulation should aggregate 10 years' interest then the trustees would have the right to declare the principal amount of the bonds immediately due and payable. As compensation for the sacrifices made by the holders of the 50-year bonds, the debtor proposed that the bonds be made convertible into new preferred stock. The bondholders insisted on the cumulative interest provision and refused to accept new stock in exchange for their bonds. Certain holders of the Gary bonds contended that the mortgage represents an underlying lien ranking with that of the general mortgage, and that the proposed plan was unjust. The debtor introduced evidence purporting to show the earnings in 1930 and 1931 of the lines subject to

the second lien of the 50-year bonds, and in 1933 and 1934 applicable to the Gary bonds, concluding that the proposed treatment of both issues was justified by the lack of earning power shown for the lines involved.

The debtor's plan proposed that the convertible adjustment bonds be exchanged for new preferred stock on the basis of $1,000 par value, of stock for each $1,000 of bonds and accumulated interest thereon. The bondholders asserted that the claim for unpaid interest has priority over the claims for any class of stock. The bondholders, generally, were unwilling to waive their claims for the payment of accumulated interest.

The holders of the debtor's present preferred stock were to receive, for each share, a voting-trust certificate representing one share of common stock having a par value of $25. The holders of the present common stock were to receive, for each share, a voting-trust certificate
3799 representing one-third share of new common. The new preferred and common stocks would have equal voting power. As regarded by the debtor, the value of the equity in its present stock was substantial.

The debtor proposed that the Terre Haute lease be not terminated if the holders of each class of Terre Haute bonds would become bound by certain modifications of the lease, including the waiving of all defaults, and by a proposed agreement not to take any action against the lessor or the lessee in respect of any default under the lease or any of the mortgages, which might have occurred prior to June 30, 1935. The equipment vacancies under the lease have been stated. The debtor conceded that the Terre Haute earns more than the interest requirements of its bonds, that a reduction of the rental would not be justified, and that a cancelation of the lease would injure all concerned. Studies of the earnings of the Terre Haute in 1925, 1926, 1933, and 1934 indicated that the leased property enabled the debtor to get its coal at a low cost for transportation and was of value to it in other respects.

The plan provided for the maintenance of a reserve fund, not exceeding $3,000,000 at any one time, and the ascertainment of available net income for 6-months periods, by deducting from income the interest on equipment obligations, loans, divisional bonds, and that part of the interest on the debtor's general-mortgage bonds which would become fixed under the plan. The order in which the pay-

ments out of available net income were to be made was as follows: (1) Contingent interest on the general-mortgage bonds; (2) capital fund, not to exceed $5,000,000 in any calendar year; (3) purchase of maturing equipment obligations; (4) interest on the 50-year mortgage bonds and the Gary bonds; (5) sinking fund for the purchase of either the general-mortgage bonds, the 50-year mortgage bonds, or the Gary bonds; and, (6) dividends or other corporate purposes.

Provision was made for a finance committee, consisting of not more than five members of the board of directors, and for the creation of a voting trust for the preferred and common stock, consisting of five members, who were named.

Excluding the proposed new obligations to the Finance Corporation, the total capitalization, including the Terre Haute, as of June 30, 1935, would have been reduced by the plan from $775,459,677 to $590,587,732, the fixed interest charges from $14,457,933 to $7,146,829, and the contingent interest charges from $9,143,685 to $7,453,840 per annum.

The plan was approved by the board of directors on June 21, 1935, and was generally acceptable to the institutional group, which, as the conferences progressed, came to be represented by a subcommittee of which F. W. Walker, vice president of the Northwestern Mutual Life Insurance Company, was chairman. In June, 1935, the group owned $61,710,600 of securities issued by or assumed by the debtor, and represented an additional $11,635,600 of securities held by an insurance company not formally a member of the group. The largest number of institutions represented in 1935 was 24.

In connection with its plan, the debtor submitted a statement of prospective earnings during the second half of 1935 and for the years 1936, 1937, 1938, 1939, and 1940, showing the manner in which the net railway operating income would be applied if the plan were put into effect on the basis of the earnings assumed. The net railway operating income was computed at $1,668,000 for the second half of 1935, with progressive increases to $16,490,000 for the year 1940. On this basis, payments of contingent interest on the general mortgage bonds would have begun in 1937, appropriations for the capital fund in 1939, and payments of contingent interest on the 50-year mortgage bonds and the Gary bonds in 1940. It appeared that if the freight

revenues of 1930 were regained in 1940 the reorgan-
3800 ized company would be able to pay all fixed and contingent interest, meet the requirements of the capital fund and sinking fund, and have about $761,000 available for dividends or other corporate purposes. The statement reflected the financing by the Finance Corporation proposed in the plan, and showed that an ample amount of cash on hand would be maintained. At the 1935 hearing the debtor took the position that if the earnings available for fixed charges could not be assumed to be $7,500,000, or more, per annum, no plan of reorganization could be made.

Evidence introduced at the hearing in June, 1937, showed that the actual earnings of the system during the second half of 1935 and the year 1936 exceeded the first estimate, the increase in total railway revenues being $12,425,543, and the increase in the income available for fixed charges being $6,706,640. Although the debtor obtained no further loans from the Finance Corporation, it carried out its program of additions and betterments in 1935-36. A revised statement of future earnings and the proposed annual payments under the original plan was presented, covering the years 1937, 1938, 1939, 1940, and 1941. Various changes in the original basis were made, such as the reduction of the proposed new loan from $12,000,000 to $8,000,000, the inclusion of $7,845,000 of new equipment obligations in 1937, and an allowance for undistributed profit taxes and taxes in connection with the Railroad Retirement and Social Security Acts. The debtor's needs for future financing were described at this hearing, and it was stated that between $12,000,000 and $14,500,000 is required annually for capital expenditures, including principal payments on equipment trust certificates. It was testified that approximately $9,000,000 of cash is needed at the beginning of each year in order that the amount on hand in July will be adequate after the payments of interest due during the first half of the year. Negotiations for a loan of $8,000,000 from the Finance Corporation had not been undertaken, but the debtor still considered it desirable, if not necessary, to predicate the reorganization on new financing by the Finance Corporation, especially as it was now clear that additional issues of the first and refunding mortgage bonds would not be salable. The debtor's general-mortgage bonds were then selling at about 60.

Also at the hearing held in June, 1937, the debtor pre-

sented a report by a special committee of its directors which pointed out the uncertainties as to general business conditions, wages, prices, rates, etc., then existing, and stated that it was unable to recommend either a modification of the 1935 plan or a new plan. An adjournment of the hearing for a period of six months was recommended. Counsel for the institutional investors' group stated that the group approved the 1935 plan, assuming that it could be adopted promptly, but would acquiesce in a postponement of the hearing for a period of six months. One member of the special committee testified that new negotiations with the large security holders would be necessary, requiring much time, and the difficulties of formulating a new plan were very great. Two major defects in the 1935 plan were recognized, viz, the inadequacy of its provisions for future financing and the cumulative interest feature in connection with the treatment proposed for the 50-year mortgage bonds.

A postponement of the hearing set for September 20, 1937, was requested by the debtor in a petition filed September 13, 1937, wherein the changes in conditions since the date of the debtor's plan were described and it was urged that the making of a new plan should not be attempted. Division 4 entered an order denying this petition. At the hearing the debtor introduced evidence regarding the recent earnings of the system, changes in the amount of debt outstanding, and other matters, but did not undertake to revise further the statement of
3801 prospective earnings previously submitted. The debtor's president stated that the uncertainties surrounding several major items of operating cost precluded the making of a new schedule. These uncertainties and the above-mentioned defects in the plan were stressed, objection was made to the adoption of any plan, and an adjournment of the hearing for 120 days was requested by the debtor for the purpose of working out a new plan in collaboration with the committee for the institutional group. The request was denied and the hearing closed.

Committee's Plan.

Upon petition by the institutional investor's group committee, the hearing was reopened by order of division 4 for the purpose of permitting the committee to file a plan. Pursuant to the provisions of that order, the committee

tendered a plan on January 10, 1938; and at the further hearing on February 1, 1938, introduced a modified plan dated January 24, 1938, which will be referred to herein as the committee's plan.

The committee, at the time of the February hearing, consisted of 16 members, representing insurance companies and banks, which, as of December 31, 1937, owned $75,310,100 of bonds of the Milwaukee and its affiliated companies, and $13,529,600 of the Milwaukee's equipment obligations, a total of $88,839,700 of securities. The interest of the committee is primarily with the underlying bonds. Despite its approval of the debtor's plan in 1935, it regards that as a "standby" plan, thinks that it is now impracticable, and further contends that it has been withdrawn from the consideration of the Commission. According to the debtor, the plan has not been withdrawn.

The committee announces certain principles which it considers should be observed in the preparation of a sound and equitable plan, and concludes that the equity in either the preferred or common stock of the debtor has no value. It further concludes that the properties of the Terre Haute should be consolidated with those of the debtor in connection with this reorganization. The plan is based on such consolidation, but, as an alternative, a continuation of the present lease is proposed, with certain provisions regarding defaults.

The $250,000 of first-mortgage bonds of the Bedford Belt Railway Company matured July 1, 1938. In the committee's brief (filed May 31, 1938) counsel expressed the opinion that if a default in the payment of these bonds should occur it would facilitate the consolidation of the Terre Haute with the debtor.

The proposed effective date of the plan is July 1, 1938, but it is stated that a later date may be substituted, in which case the basic figures should be adjusted.

In determining the capitalization of the reorganized company, the committee accorded predominant weight to the earning power of the system. The committee states, however, that the cost of reproduction of the property, less depreciation, as well as the original cost, should not be ignored in fixing the new capitalization, that these factors are important in a determination of the rate base, and that account must be taken of the rate base in making any estimate of earnings. The committee contends that, in view of the fact that the new common stock is to be with-

out par value, an exact determination of the value of the properties is not required, it being necessary merely to find that the value lies between $356,664,671, the total amount of new securities having par value, and $615,397,979, the amount of the debt, as of June 30, 1938.

Under the committee's plan, the ratio of fixed-interest debt to total capitalization would be about 26 percent, and the ratio of total debt to total capitalization would be about 43 percent. F. W. Walker, testifying for the committee, was of the opinion that the ratio of total debt should in no event exceed 60 percent, and that the amount of fixed-interest debt should correspond to not exceeding one-half the available net income.

The plan provides for a reduction in the total debt from $613,163,000, as of June 30, 1938, to $276,198,000, and a reduction in total capitalization from $849,876,000 to $640,687,900, taking the no-par common stock at $100 a share. Total fixed interest charges would be reduced from $14,572,000 to $6,556,000, total contingent charges from $10,283,000 to $8,450,000, and preferred stock dividends from $5,965,000 to $3,911,000 per annum. The foregoing figures do not give effect to the issue of equipment-trust certificates, series S, which would increase the fixed interest charges to $6,639,812 per annum. All unpaid fixed interest is treated in the committee's plan on a parity with the principal of the debtor.

The plan shows all equipment-trust obligations, including lease agreements, in the aggregate principal amount of $30,616,671*, undisturbed as to lien and interest, but the principal of equipment-trust certificates series A, C, D, E, F, G, H, J, K, and L would be paid at the rate of 20 percent of each installment annually, in accordance with the practice now being followed under orders of the court. Equipment-trust certificates of series M and N, together with the trustees' equipment-trust certificates O, P, Q, and R, and any other certificates which may be issued by the trustees before the effective date of the plan, are not affected by the plan and would be assumed by the reorganized company.

Under this plan the loans from the Finance Corporation, all the Terre Haute bonds, and the Northern first-mortgage 4½-percent bonds are allotted new first-mortgage

* Including $2,235,000 of series S certificates issued April 1, 1938, the grand total to be assumed would be $32,751,671.

bonds equal to 100 percent of the principal obligation plus unpaid interest. All securities pledged with the Finance Corporation would be surrendered for cancellation or for pledging by the new company with the trustees under the new mortgages. From a study of the 1936 earnings applicable to the securities now pledged, the committee concludes that the value of the collateral justifies the proposed allotment of new first-mortgage bonds to the Finance Corporatioon. An additional $10,000,000 of new first-mortgage bonds is proposed to be issued, and held in the treasury as a reserve for emergencies.

The present Northern consolidated-mortgage bonds and the debtor's general-mortgage bonds are each allotted new first-mortgage bonds in amounts equal to 60 percent of the claim for principal and interest, and new income-mortgage 4½-percent bonds equal to 40 percent. In addition, one share of no-par common stock would be offered for each $1,000 of claim.

The debtor's 50-year mortgage bonds are allotted new income mortgage convertible 5-percent bonds equal to 40 percent of the claim for principal and interest and new 5-percent preferred stock equal to 60 percent, together with one share of no-par common stock for each $1,000 of claim.

The Gary bondholders would be offered new 5-percent preferred stock equal in par value to the amount of the principal amount of bonds and unpaid interest.

The holders of the debtor's adjustment-mortgage bonds would be offered one share of no-par common stock for each $100 of claim for principal and interest.

All unsecured claims, not entitled to preference, and all valid obligations of the debtor for which no specific provision is made in the plan, would be allotted one share of common stock for each $500 of claims.

The committee believed that the debt to the Railroad Credit Corporation would be liquidated before the effective date of the plan but provided that, if not so liquidated, such debt would be paid or assumed by the new company.

3803 Claims not affected by the plan, which would be assumed or paid by the reorganized company, include all lease agreements not disaffirmed, current liabilities of the debtor incurred in the conduct of business prior to the institution of this proceeding which are entitled to priority over any mortgage bonds of the debtor, and liabilities of

the debtor under terminal company guaranties not disaffirmed by the reorganized company.

The committee made an analysis of the debtor's earnings, modifying the debtor's income accounts, as has been explained, by adding back the rental payments (bond interest) under the Terre Haute lease, and by certain other adjustments. Within the period from 1930 to 1936, inclusive, the lowest average net income available for interest was shown as $7,859,106, representing the five depression years 1931-35. This was deemed to be a minimum for future years. For a future normal year, the committee adjusted the debtor's forecast for 1939, arriving at total gross revenues of $126,900,000 and an income of $15,894,000 available for the payment of interest, before Federal taxes. The committee believes it proper to capitalize earnings on a 5-percent basis.

The fixed-interest charges under this plan would be covered about 1.2 times by the future minimum earnings of the system and 2.4 times by the future normal earnings, as estimated by the committee. If from the assumed future normal income be deducted the proposed fixed-interest charges and the estimated payment of $2,538,000 to an additions and betterments fund, the remainder, approximately $6,716,000, would be available each year for contingent interest, sinking-fund payments, and dividends. Approximately $5,346,000 would be required for the payment of interest on the proposed series-A and series-B income bonds, and $566,000 for the sinking funds, leaving $804,000 for dividends on the new preferred stock.

The committee proposes that $132,414,000 of series-A first-mortgage bonds be issued in the reorganization, exclusive of the $10,000,000 of bonds to be made available for emergencies. These first-mortgage bonds would have a term of 30 years, and would pay interest semiannually at the rate of 4 percent per annum. Other first-mortgage bonds would be issuable in series for (1) net additions and betterments and the acquisition of property (except equipment), after reorganization, to the extent of 75 percent of the cost thereof, (2) the acquisition of new equipment to the extent of 75 percent of the net cost thereof, provided the term of the bonds shall not exceed either 15 years or the estimated life of the equipment, and provided a sinking fund is created in order to retire these bonds within their term, (3) the acquisition of lines of railroad, or securities of companies owning lines of railroad connecting

with the debtor's lines, provided the amount of new bonds so issued, together with existing liens and indebtedness on the property being acquired shall not exceed 75 percent of the net cost thereof, (4) the refunding of mortgage obligations which are on a parity with the new first-mortgage bonds, and (5) future consolidations or mergers. In the event of an involuntary consolidation the 75-percent limit would not be applicable. The issue of additional bonds for the purposes described under (1), (2), and (3) above, would be allowable only in the event the system income available for the payment of interest shall amount to 1½ times fixed charges during any period of 12 consecutive calendar months out of 18 calendar months immediately preceding the month in which application is made for authority to issue such bonds.

The committee's plan provides for a reserve and retirement fund and an additions and betterments fund, to be segregated and used only for specific purposes. Payments into the first-named fund would be made annually in amounts equal to the charges to depreciation of equipment, the minimum charge being $5,500,000 a year, so long as any first-mortgage series-A bonds shall be outstanding.

Funds so derived, together with such amounts as 3804 may be received from the additions and betterments fund, would be used for specified purposes, the first of which would be the payment of the principal of equipment-trust obligations and the second the payment of not less than 25 percent of the cost of new equipment if purchased under equipment trusts or by the issue of bonds. It is provided that any amount remaining in the reserve and retirement fund in excess of $5,000,000 would be available for additions and betterments under prescribed conditions.

Payments into the additions and betterments fund would be made annually on the basis of 2 percent of railway operating revenues, or $2,500,000 a year, whichever is larger, such payments to be made obligatory to the extent earned, after all fixed charges and payments to any sinking funds which may be created for the retirement of fixed-interest bonds. This fund would be used to provide for, or reimburse the reorganized company for, "improvements and betterments" which are not to be used as a basis for the issue of securities, or it may be applied to 25 percent of the cost of improvements and betterments which are to be funded into bonds for the remaining 75 percent before the end of the calendar year next succeeding the date of acqui-

sition of such additions and betterments. Any moneys remaining in this fund, after payment or appropriations for the foregoing purposes, would be transferred to the reserve and retirement fund and used in accordance with the provisions for that fund.

In the opinion of the committee, no new money will be required in the reorganization, and the funds described above will provide for all the ordinary needs of the new company. Reference is made to the testimony indicating that there is no deferred maintenance on the property. In any event, the plan provides for the $10,000,000 of first-mortgage bonds for emergency use.

It is proposed to issue $$63,439,000 of series-A and $49,828,000 of series-B income bonds in exchange for present securities, and additional series would be issuable later under prescribed conditions. The series-A bonds would have a term of 50 years and bear interest at the rate of 4½ percent per annum, payable annually, contingent upon earnings, and cumulative up to a total of 13½ percent, whether for consecutive or nonconsecutive income periods. Interest, and accumulations thereof, on the series-A bonds would be paid before any interest is paid on the series-B bonds. The proposed series-B income bonds differ from the series-A bonds in that their term would be 60 years, the contingent interest rate would be 5 percent per annum, cumulative up to a maximum of 15 percent, and they would be convertible into common stock, at the option of the holder, on the basis of 15 shares of stock for each $1,000 of bonds, with appropriate provisions for the adjustment of interest and dividends.

The plan provides for a sinking fund for all series of general mortgage income bonds, the fund for series-A and series-B to be created by the annual payment to the mortgage trustee of an amount equal to one-half of 1 percent of the aggregate amount of bonds of these series issued in the reorganization. Payments to the sinking fund would be noncumulative and would be made only to the extent of the net income available after provision for the interest requirements on these bonds.

The plan provides that general-mortgage bonds additional to those of series-A and series-B, may be issued, subject to approval by the Commission, for the same general purposes as those specified for additional issues of the new first-mortgage bonds, to the extent that bonds of the latter kind shall not have been issued for the same purposes, pro

vided that there are no accumulations of interest on the general-mortgage bonds and that the full interest on such bonds for the two preceding calendar years shall have been paid. The bonds issued in additional series would have such position with regard to priority of call upon available net income as the board of directors of the new company might determine, but in no event would any additional
3805 issues have priority over series A as to the payment of interest. The board of directors would prescribe the conditions of these additional series with respect to interest rates, denominations, redemption, conversion, etc.

The authorized amount of the new preferred stock would be unlimited, subject to the laws of the State or States in which the reorganized company is incorporated. Series-A preferred stock, in the par amount of $78,231,000, would be issued in the reorganization. This stock, having a par value of $100 a share, would be entitled to dividends at the rate of 5 percent per annum, as declared by the board of directors, such dividends to be noncumulative, but no dividends on the common stock would be permitted unless and until provision shall have been made for the payment of 5-percent dividends on the new preferred stock of series-A for each of the three consecutive income periods immediately preceding the date of payment on the common stock. After dividends have been paid, declared, or funds set aside for payment, on the common stock at the rate of $3.50 a share in respect of any income period, each share of the new preferred stock of series A would be entitled to participate equally with each share of new common stock in any additional dividends to the extent of $1 a share in any such income period. In the event of a dissolution of the reorganized company, the holders of the preferred stock would be entitled to receive the par value thereof together with all dividends declared but not paid before any distribution of assets would be made to the holders of any other class of stock. The new preferred stock would be redeemable at the option of the reorganized company, in whole or in part, at 105 and unpaid dividends. The owners of series-A preferred stock would be entitled to one vote for each share. Provision is made for the issue of series other than series A, but not having priority over series A, with such limitations and provisions with respect to dividend rates, redemption, conversion, etc., as may be prescribed by the board of directors. So long as any series A stock remains outstanding, the consent of the holders of

at least a majority of such stock would be required for the authorization of any additional series of preferred stock ranking on a parity with series A.

The proposed common stock would be unlimited in authorized amount, subject to State laws, and would be without par value. It would be entitled to one vote for each share. In addition to the proposed initial issue of 2,862,577 shares, approximately 890 shares would be issuable for the settlement of general unsecured claims, and 747,420 shares would be issuable for the conversion of the general-mortgage series-B bonds. The holders of the present preferred stock and common stock are not afforded any participation in this plan. Counsel for the committee state that the laws of Wisconsin, under which the present debtor was incorporated, permit the issue of no-par stock, and that the sale of stock having a par value, at a price less than such value, would be illegal. In view of this situation, counsel are of the opinion that new common stock having a par value would restrict the use of such stock for the purposes of future financing.

The plan provides that the available net income of the new company shall be determined for each calendar year as promptly as possible after the termination thereof, and if the company shall fail to earn its fixed charges in any income period, the deficit shall be added to the fixed charges in the next succeeding income period. As so determined the available net income for each income period would be applied to the following purposes in the following order: (1) To the payment of the annual installment for the additions and betterments fund; (2) to the payment, on April 1, of the contingent interest on the series-A income bonds, and any accumulations thereof; (3) to the payment, on April 1, of the contingent interest on the series-B income bonds; (4) to the payment, on April 1, of the contingent interest on any other series of income
3806 bonds which may be issued subsequently; (5) to the payment to the trustee under the general mortgage, for account of the sinking fund for the income mortgage bonds, of amounts up to one-half of 1 percent of the aggregate principal amount of the series-A and series-B bonds outstanding; and (6) to the payment of dividends, as the board of directors may determine, on the several classes of stock outstanding, in the order of their priority, or for general corporate purposes.

The plan provides for a new board of directors consist-

ing of not less than 7 nor more than 15 members, and for the creation of a voting trust consisting of five trustees, two of whom would be designated by the committee, two by the holders of the new preferred stock and common stock, and one by the Finance Corporation. It appears that, in practice, the committee would designate a majority of these trustees. The voting trust would continue for 10 years, or until dividends on the new preferred stock shall have been paid in full for three consecutive periods of 12 months. Walker defended the proposed voting trust on the ground that the stock of the reorganized company would probably have a low initial market value, and, if not protected by a voting trust, might fall into the hands of investors or speculators who would not have any permanent interest in the property. He also thinks that a voting trust is necessary in order to safeguard the interest of the present senior creditors who will receive little or no new voting stock.

The plan also provides for reorganization managers, to receive compensation as may be determined in accordance with the provisions of section 77, as amended, and to consist of not more than three members, two to be designated by the committee and one by the Finance Corporation, or, if not designated by the latter, then by the court.

Provision for dissenting creditors is made in the plan by the requirement that if the holders of more than one-third in principal amount of any class of creditors shall not accept the plan, the property of the debtor may be sold at public auction, at a fair upset price determined by the court, and the nonassenting creditors of such class shall be entitled to receive their aliquot portion of the proceeds of the sale, after deducting therefrom all expenses of the sale and the amount which would be required to pay, in full, principal and interest to the date of the sale, all creditors whose claims are prior in lien or superior in equity to the claims of such non-assenting creditors. Upon any such sale, the property may be purchased for the benefit of the reorganized company by the reorganization managers or their nominee, and, if so purchased, there may be applied on account of the purchase price the distributive share of the proceeds of the sale of all securities of the debtor, the holders of which shall have assented to the plan, and of the securities though not assenting to the plan, of all classes of which two-thirds in amount of those voting shall have accepted the plan. Counsel for the committee insist that the

foregoing provision is consistent with section 77(b)(5) and is supported by the legislative history of the act.

The primary test for the committee's proposed allocation of securities was the debtor's analyses of revenues, expenses, and net income during 1936 for the Terre
3807 Haute, the Northern, the Gary, and the lines west subject to the first lien of the debtor's first and refunding mortgage and the second lien of the 50-year mortgage. The total system earnings, less the aggregate earnings of these portions of the system, as calculated by the debtor, were assumed to represent the earnings of the lines east, which are, in general, subject to the first lien of the general mortgage. Extensive testimony was taken in connection with this matter, and representatives of the 50-year mortgage bonds, in particular, raised objections to the methods employed by the committee and the treatment proposed for these bonds.

In support of the proposed consolidation of the Terre Haute's and debtor's properties, the committee points out the virtual ownership of the former which now exists under the 999-year lease, the early maturities of some of the Terre Haute bonds, the equipment vacancies of more than $7,000,000 under the provisions of the mortgages, and the difficulty of abandoning the unprofitable lines of the Terre Haute under the present lease. The committee refers to the showing that, in 1936, the earnings of the Terre Haute on the cost-of-service basis were substantially double the interest charges on its bonds, and also points to the interdependence between the two roads. It is asserted that it would be distinctly to the interest of the Terre Haute to accept the terms offered, despite a reduction of interest rates.

As an alternative to consolidation of the Terre Haute property, the committee suggests that the lease, and the obligations of the lessee thereunder, be modified so that all defaults in the performance of the covenants contained in the lease be waived and the lessee shall not be obligated to remedy any defaults, including failure to replace equipment, which shall have occurred prior to the effective date of the plan, but shall be obligated to replace on or before 10 years from the effective date of the plan vacancies in equipment subject to the mortgages occurring on or after such date. The holders of each class of Terre Haute bonds would be asked to enter into an agreement with the reor-

ganized company not to take, or cause the trustees under the mortgage to take, any action against the lessee or the lessor under the Terre Haute lease in respect of any default under either the lease or any of the mortgages which may have occurred prior to the effective date of the plan. If the holders of each class of bonds should become bound by the suggested modification of lease and by the new agreement, the reorganized company would not reject or terminate the lease.

In allotting new first-mortgage series-A bonds on the basis of 100 per cent of the claims of the holders of the Northern first-mortgage bonds, the committee relied on the earnings in 1936 of that part of the Northern, which is subject to the lien of this mortgage. After adjusting the debtor's calculations to show an allocation of revenues and expenses strictly on a system basis, the committee concluded that the line in question earned three times its interest charges. According to the debtor's calculations, the interest was earned about 4.3 times.

The allotment of new first-mortgage series-A bonds, in amounts equal to the claims of the Finance Corporation, the Terre Haute bondholders, and the holders of the Northern first-mortgage bonds, as described above, is based on the committee's belief that these claims are entitled to priority over the general-mortgage bonds. Accordingly, the committee deducted the total amount of those claims from the permissible amount of new first-mortgage bonds previously determined and arrived at $95,158,000 as the balance of new bonds available for distribution to the holders of the debtor's general-mortgage bonds and the 3808 Northern consolidated mortgage bonds. Such amount is 60 per cent of the amount of the present bonds, with accrued interest, in those two classes. The remaining 40 per cent is supplied through new series-A 4½ per cent income bonds, and, in addition, one share of new common stock is allotted to each $1,000 of claim, as has been shown. The allotment of stock is said to be in partial compensation for the bondholders' loss of fixed interest and their contribution in the form of a compulsory additions and betterments fund.

The committee proposes that the general-mortgage bonds and the Northern consolidated mortgage bonds be treated on the same basis, because the earnings coverage in 1936 was approximately 1.2 times interest in each case.

The entire amount of new first-mortgage bonds considered permissible by the committee was assigned before reaching the debtor's 50-year mortgage bonds, its convertible adjustment bonds, and the Gary first-mortgage bonds. Giving first consideration to the 50-year bonds, the committee allotted all the proposed series-B 5 per cent income bonds to this claim, such allotment representing 40 per cent of the principal plus accrued interest, and provided for 60 per cent by an allotment of new preferred stock, adding one share of new common stock for each $1,000 of claim. If earnings permit the payment of 5 per cent per annum on the new income bonds and preferred stock, the present bondholders would receive a return equal to interest at that rate on the total claim for principal and interest. Total fixed and contingent charges, together with the annual payment to the additions and betterments fund, aggregate approximately $12,000,000, ahead of any interest on the proposed series-B income bonds. The available income of the system in 1936, as adjusted by the committee, was $12,298,916.

As has been indicated, the significant feature of the 50-year mortgage is that it represents a second lien on properties subject to the first lien of the first and refunding mortgage, under which no bonds are outstanding in the hands of the public. It has been considered that the latter mortgage represents a first lien on some 2,860 miles of the debtor's line west of the Missouri River, on the Terre Haute leasehold, and on certain other parts of the system east of the Missouri River, viz., the "pieces of lines east." With respect to the latter, the lien is subject to a ruling by the court on the contention of the general mortgage trustee that such lines are subject to the first lien of the general mortgage. The debtor adopts a neutral attitude on this question. There is also a question as to the propriety of treating the earnings of the Terre Haute as free for application to the 50-year bonds unless the lien of the first and refundings is satisfied. These matters have a bearing on the proper distribution of earnings among the mortgage districts.

The evidence upon which the committee relies for its treatment of the 50-year bonds indicates that in the year 1936, the lines west operated at a deficit of $1,108,825, the earnings of the "pieces of lines east" were $170,100, and the income from the securities pledged under the first and

refunding mortgage was $402,031. Eliminating the latter amount as having been absorbed in the treatment accorded the Finance Corporation, the result is a deficit of $938,435. This is compared by the committee with a prospective return of $304,104 a year on the new series-B income bonds (based on the system earnings of 1936), and a yearly expenditure of about $500,000 for additions and betterments on the lines west, from the use of the proposed fund. Representatives of the 50-year bonds objected to the methods used in computing the earnings of the lines west subject to the second line of this mortgage.

The committee allots preferred stock only to the holders of the Gary first-mortgage bonds, based on the Gary's
3809 lack of earning power and its unimportance to the system. The committee considers that the trackage contract with the Elgin, Joliet & Eastern is burdensome and that substantial portions of the line should be abandoned in the interest of economy.

Debtor's Suggested Modifications of the Committee's Plan.

The debtor introduced a statement at the February, 1938, hearing showing the modifications of the committee's plan which it considered necessary or desirable, including the terms of the new mortgages and other details. A partial revision of the suggested modifications appeared in the debtor's brief.

In these statements, as well as through the testimony of witnesses, the debtor emphasizes the fact that it does not approve the committee's plan, even as modified; that it does not consider the proposed capitalization sound nor the proposed distribution of new securities fair, especially in the case of the debtor's general-mortgage bonds and 50-year bonds, and the Northern's bonds. The debtor asserts that no plan of reorganization can properly be made under the economic uncertainties existing, and fears that a serious injustice to the junior creditors would be done if there should be a material improvement in earnings, while if no improvement occurs, there would be inadequate support for the new capital structure. The debtor states that in June, 1937, it recognized the necessity of revising its first plan but was unable to arrange conferences with the committee for that purpose. Upon the insistence of the Commission that the hearings be closed at an early date, the debtor prepared its suggested modifications of the committee's plan. Its final attitude, as expressed by counsel on

brief, is that the Commission should refuse to approve any plan; that there is no compelling necessity for an immediate reorganization; that, under present conditions, there would not be sufficient income to pay a substantial return on vested capital, even if a reorganization were consummated; and that the Commission will be unable to make the basic finding of probable prospective earnings, required under section 77, and thus to work out a plan. The debtor urges that the matter of consolidation with other lines be studied, and that the record be reopened for the introduction of further evidence and further suggestions regarding a plan when the earning power of the railroad shall have been restored in some degree.

Subject to the foregoing reservations the debtor suggests the following principal modifications of the committee's plan:

1. The holders of the present preferred stock should be allotted, for each present share, one-third share of new common stock and a warrant for the purchase of two-thirds share of new common on the basis of $25 a share during the first five years, with an ascending scale of prices during subsequent years. The holders of the present common stock should be allotted, for each present share, a warrant for the purchase of one-half share of new common, on the same price basis. The proceeds of the exercise of the warrants would be used toward retiring the debt of the reorganized company.

The debtor's board of directors recognizes the fact that the present stockholders have no equity in the property on the basis of its present earning power, but on the basis of the section 19a valuation and the reported elements of value, the board believes that an equity exists, at least in the preferred stock. It further believes in the possibility that earnings will increase in the future to the extent that both the common and preferred stock would represent value.

2. The approved plan should provide for a consolidation of the Terre Haute properties with those of the 3810 debtor, refunding the former's bonds with new bonds of the reorganized debtor, as proposed by the committee. In the alternative, the Terre Haute should be reorganized, and the bonds exchanged for the bonds of the reorganized debtor, and pledged under the reorganized debtor's new mortgages. This alternative treatment differs

from that proposed by the committee in that the latter provides for a continuation of the present lease and of the debtor's obligations with respect to payment of principal and interest of the Terre Haute bonds.

Counsel for the debtor, on brief, discuss the difficulty of devising a plan which will be equitable with respect to the Terre Haute bondholders without doing injustice to the senior creditors of the debtor, especially if future fixed charges should be reduced to an amount less than $6,500,000 a year.

3. The settlement of the secured claims against the debtor should be limited to a realization of the principal and interest of the debt, and, accordingly, the committee's provision for the allotment of common stock to the holders of certain bonds, in addition to the allotment of senior securities equal to face value to 100 per cent of the debt, should be eliminated.

4. The effective date of the plan should be January 1, 1939.

5. The amount of the debtor's working capital at the time of reorganization will be inadequate, and the plan should, therefore, provide for new money by the immediate sale of not more than $10,000,000 of new first-mortgage bonds. The debtor shows how the payment of interest charges, under orders of the court, has declined since 1936, and the large depletion of cash on hand which accrued between January 1 and June 30, 1938. It also shows that in 1936 and 1937, when substantial amounts of equipment-trust maturities were deferred, the gross charges to additions and betterments of road and equipment greatly exceeded the total of the charges to depreciation of equipment, roadway retirement charges, and salvage recovered.

The debtor insists that the committee has failed to provide sufficient working capital for the reorganized company, and with respect to future financing, has provided an inadequate additions and betterments fund, as well as an impracticable method of financing by additional issues of first-mortgage bonds. It suggests that, out of the $10,000,000 of new cash to be provided, $5,000,000 should be set aside at once for the additions and betterments fund.

6. The committee's proposal to prohibit the issue of additional first-mortgage bonds unless fixed charges shall have been earned 1½ times during 12 consecutive months, should be eliminated, and the plan should provide, instead,

that the fixed-interest funded debt of the reorganized company be limited to 35 per cent of total capitalization, and the total fixed-interest and contingent-interest debt to 55 per cent of total capitalization, computing the common stock issued in the reorganization at $100 a share.

7. The plan should prohibit the issue of additional first-mortgage bonds at times when financing might be done by the issue of income bonds at a cost of less than 5 per cent per annum, or with stock at a cost of less than 6 per cent per annum, provided that the common stock be not issued at a price less than $50 a share. It is further suggested that income bonds should not be issued if the financing could be effected with new stock, on the foregoing basis.

On brief, counsel state that the governing percentages suggested in Nos. 6 and 7, above, are tentative and that a further study of the proposal, which is along new lines, might indicate other percentages to be desirable. It is thought by counsel that the committee's limitation on new bond issues would prevent the use of fixed-interest obligations during periods of low earnings, while at times of high earnings the tendency would be to raise money at low cost and to increase the ratio of fixed-interest debt unduly. Counsel contend that it would be futile to reorganize a railroad on the basis of a conservative debt ratio and then permit the piling up of new debt. The debtor's proposal, is intended to maintain a conservative debt ratio and 3811 to force the use of income bonds and stock for financing during periods of prosperity, while restricting the use of fixed-interest bonds (free from the 1½-times coverage requirement) to periods of low earnings.

8. The amount of new first-mortgage or income-mortgage bonds which may be issued for pledge should be limited to 150 per cent of the amount of the obligation for which the pledge is made.

9. The amount in the additions and betterments fund should be maintained at a minimum of $5,000,000, the mandatory payment to the fund should be $2,500,000 per annum, and the additional payment should be an amount sufficient to bring the total up to $5,000,000, or 4 per cent of total revenues. The second payment should be at the discretion of the board of directors. In support of the total requirement of $5,000,000, the debtor's brief contains a statement showing the annual charges to additions and betterments each year from 1928 to 1937, together with a

statement of the cash obtained each year from equipment depreciation charges, road retirements, and salvage, and a reference to the debtor's testimony showing the future needs of the system.

While insisting that the additions and betterments fund should be in the amount stated, the debtor recognizes the fact that, with total fixed charges of about $6,556,000, only half the required amount would have been earned for the fund in the years 1932, 1934, 1935, 1937, and probably in 1938. Nevertheless, the debtor prefers a plan providing for a $5,000,000 fund, rather than for a $2,500,000 fund and the financing of the remaining $2,500,000 by a bond issue.

10. The term of the first-mortgage bonds should be 50 years, that of the series-A general-mortgage bonds 65 years, and that of the series-B general-mortgage bonds 75 years, instead of 30 years, 50 years, and 60 years, respectively, as proposed in the committee's plan.

11. Instead of a voting trust, the plan should provide for the election of directors by the new stockholders, directly, with provisions to safeguard the prior equitable right of control by the new preferred stockholders. The debtor points out that the new preferred stock will be allotted largely to the holders of bonds which were issued in the 1928 reorganization, and it contends that the right of control of the reorganized company equitably belongs, first, to the holders of the new preferred stock, and, after a continuous return on the preferred stock shall have demonstrated, to the stockholders generally.

12. The reorganization should be carried out under the supervision of a reorganization committee, the members of which should be chosen by all the creditors affected.

13. Additional bonds should be issuable for financing legitimate capital expenditures, without the detailed specification of expenditures proposed by the committee.

In this connection, counsel suggest that the Commission should modify its practice of basing the authorization of new security issues on the cost of additions to property, loss retirements, when, in the case of a reorganized railroad company, the capitalization has been drastically reduced. It is pointed out that the gross expenditures incurred in connection with future consolidations or coordinations should not be considered to be offset in any degree by subsequent abandonments of line. Some modification of the Commission's accounting rules is suggested

to the end that the issue of new securities shall not be restricted by retirement charges occurring within, say, two years of the consummation of the reorganization.

3812 14. The restrictions on the use of the reserve and retirement fund, as proposed by the committee, should be altered. The debtor considers that the proposed earmarking of expenditures to be made from this fund may prove to be unworkable in practice and suggests that the fund should simply be available for whatever amount of capital expenditures is not financed by new securities, even though that amount be more than 25 percent of the expenditures. It thinks that the fund should be available for reimbursement of the treasury for past capital expenditures without the necessity for issuing new securities. The debtor also objects to the order of priority of payments from the fund, as prescribed in detail in the committee's plan.

The debtor proposes to provide for dissenting creditors and stockholders in the following manner. If any class of creditors or stockholders of the debtor affected by the plan shall not accept the plan, in accordance with the provisions of section 77 of the Bankruptcy Act, as amended, within such period as the debtor, with the approval of the reorganization committee and the court, may determine, the property of the debtor, or any part thereof, may be sold at public auction at a fair upset price determined by the court, and the non-assenting creditors of such class or the non-assenting stockholders of such class, as the case may be, shall be entitled to receive their aliquot portion of the proceeds of the sale of such property, after deducting therefrom all expenses of such sale and the amount which would be required to pay in full, principal and interest to the date of such sale, all creditors whose claims are prior in lien or superior in equity to the claims of such non-assenting creditors or the rights of such non-assenting stockholders. Upon any such sale, the property may be purchased for the benefit of the reorganized company by the reorganization committee or its nominee, and, if so purchased, there may be applied on account of the purchase price the distributive share of the proceeds of sale of all securities of the debtor, the holders of which shall have assented to the plan, and of the securities, though not assenting to the plan, of all classes which have accepted the plan.

The debtor's suggested modifications are presented in the form of a complete plan, based upon the obligations outstanding on December 31, 1938, with a total proposed capitalization of $670,777,000 (including to be issued for new money, and excluding stock issuable under exercise of warrants), as compared with a total capitalization of $640,687,000 contemplated by the committee. The increase in total debt between June 30 and December 31, 1938, is shown as $8,641,000. A comparison of annual charges under the committee's plan and under the debtor's suggestions is as follows:

	Committee	Debtor
Equipment obligations[1]	$ 1,260,000	$ 1,165,000
First-mtge. series A 4% bonds	5,296,000	5,371,000
First-mtge. bonds ($10,000,000) issuable for new capital, etc.	400,000	[2]500,000
Total fixed charges	6,956,000	7,036,000
Add. and bett. fund	2,538,000	5,000,000
Contingent interest on series A general-mortgage bonds	2,855,000	2,911,000
Contingent interest on series B general-mortgage bonds[3]	[2]2,491,000	2,290,000
Sinking funds	566,000	578,000
Total fixed and contingent charges	15,406,000	17,815,000
Preferred stock dividends	3,911,000	3,995,000
Common stock dividends at $3.50 a share	10,019,000	10,580,000
Grand total	29,336,000	32,390,000

3813 The debtor appears to accept the committee's initial premise that equipment obligations should remain undisturbed, that the total debt to the Finance Corporation should be refunded in new first-mortgage bonds, and that the total principal amount of the four groups of Terre Haute bonds should be refunded also by new first-mortgage bonds. With distinct reservations, the debtor

1. Omits series S certificates.
2. The rate is 5 percent on this issue.
3. The rate is 5 percent in the committee's plan; 4½ percent in the debtor's modifications.

adopts the percentages used by the committee in assigning new bonds and stock to the general-mortgage bonds, 50-year bonds, and the Northern bonds, new preferred stock to the Gary bonds, and new common stock to the debtor's adjustment-mortgage bonds. With respect to the total allowable amount of new first-mortgage bonds and new income bonds, the debtor makes no determination of its own, leaving these amounts to the judgment of the Commission, but states that it would be impossible to work out any allocation of new securities in the event fixed charges were reduced to $5,000,000 a year or less.

The debtor comments on the earnings base used for the committee's plan, comparing the actual earnings in 1937 and during the first quarter of 1938 with the forecasts made, and also points out that the aggregate of fixed charges and the payment to the additions and betterments fund in the committee plan would exceed the average annual income available in 1931-35, 1932-36, or 1931-36. The debtor considers it doubtful that even as much as $5,000,000 of fixed charges would be justified, and shows that if the interest charges were paid on existing equipment obligations, collateral loans, the Terre Haute bonds, and the $10,000,000 of new bonds, considered to be the minimum amount issuable to provide new money, there would remain only $1,800,000 for the payment of other fixed interest. This would permit the issue of new 4-percent bonds equal to only 30 percent of the present aggregate amount of the debtor's general-mortgage bonds and the Northern bonds, representing first liens on a major part of the system. In the debtor's view, a further injustice to the present bondholders would be imposed should it be necessary for the reorganized debtor to issue first-mortgage bonds for new money, perhaps in larger amount that $10,000,000, such bonds having priority as to both principal and interest over other first-mortgage bonds.

Interveners' Views and Contentions.

In their briefs, four interveners oppose the adoption of any plan at this time. The more important reasons given are the uncertainties existing with respect to earnings, rates, wage scales, taxes, etc., the danger that the reorganized company would be unable to meet its fixed charges at the outset, the lack of wisdom in putting the railroads "through the wringer" in times of depression, the un-

reliable nature of the segregation of earnings upon which the committee's plan is based, and the necessity for a thorough study of possible consolidations with other lines. These interveners, generally, agree with the debtor that the property is being economically managed and that it should remain in the hands of the court until such time as a reasonably sound estimate of future earnings can be made.

Excepting the qualified approval of the committee's plan indicated in the brief filed by the trustee of the debtor's general mortgage, and the neutral position taken by two other interveners, all the parties object to the plan. The objections made in behalf of the debtor's 50-year mortgage bonds and the Northern bonds are particularly important.

3814 The trustees of the 50-year mortgage, complaining of the threatened impairment of the lien position of these bonds, assert that no opportunity was given the bondholders to consult with the committee in preparing the plan, that the committee had no data, except those originally furnished by the debtor, to justify a change in the mortgage liens, and that the committee prepared its plan hurriedly, using the only data available. The objection to these underlying data was emphasized in the brief filed in behalf of William Church Osborn, representing a substantial amount of the 50-year bonds. The expert employed by this intervener to examine the segregation studies used by the committee testified at the hearing to the effect that the study purporting to show the earnings of the lines west of Mobridge was incomplete and inaccurate. This intervener contends that the committee's plan fails to recognize the equity of the 50-year bonds in the earnings of the Terre Haute, in the value of the physical property subject to the lien of the mortgage, in the contribution by the western lines to the earnings of the eastern lines, and in the effect of future consolidations on the earning power of the western lines. The intervener takes the position that the first and refunding mortgage bonds outstanding are fully satisfied by the value of the securities pledged under that mortgage, leaving the lines west, the "pieces of lines east," and the Terre Haute leasehold entirely applicable to the first lien of the 50-year mortgage bonds. In connection with other objections to the plan, intervener Osborn states that there could be no default on any series of new income bonds unless and until a default occurs on the new

first-mortgage bonds, that the series-B income bonds to be offered to the holders of the 50-year bonds represent no real lien, and that the holders of the debtor's general mortgage bonds would receive new bonds carrying a lien on all the mileage west of Mobridge, as well as on the Terre Haute lines, both of which properties are now, in effect, subject to the first lien of the 50-year bonds.

The trustee of the Northern mortgages contends that the plan is unfair in its treatment of both classes of the Northern's bondholders, and that both issues of bonds should be extended for a period of 10 years, maintaining the present interest rate of 4½ percent, and leaving the mortgages undisturbed. Objection is made to the proposed treatment of the first-mortgage bonds on a parity with the Terre Haute bonds on the ground that earning power and value of the Terre Haute lines are inferior to those of the Northern. In this connection, it is asserted that the committee gave undue weight to the amount of the equipment vacancies under the Terre Haute mortgages, without giving any weight to the equipment vacancies under the Northern mortgages. The plan provides that the Northern consolidated mortgage bonds be treated on the same basis as the debtor's general-mortgage bonds on the theory that the earnings coverage in 1936 was the same in each case. The mortgage trustee does not concur in this view and does not accept the computation made of the coverage for the Northern consolidated bonds. Through the testimony of a witness, certain corrections in this computation were suggested, and it was urged that the contribution of the Northern to the earnings of the system be given consideration. The witness's testimony indicated that the Northern might operate effectively in connection with at least three carriers other than the debtor, and also that substantial operating savings might be effected through coordination of facilities.

In the light of the showing with respect to the present and potential value behind the present Northern bonds, the
3815 trustee comments on the probable value of the new bonds to be offered in exchange for the Northern bonds under the committee's plan, showing that the earnings coverage in 1936 for both the new first-mortgage bonds and the new income bonds would be much less than that for the Northern bonds, and the testimony of witnesses was cited to show that the new first-mortgage bonds would not be marketable at a price much above 50.

The trustee of the debtor's general mortgage does not

oppose the proposed treatment of the general-mortgage bonds but believes that, if the "pieces of lines east" should be found by the court to be subject to the first lien of this mortgage, a more favorable treatment should be accorded. The trustee states that the new series-A income bonds should have priority over the new series-B income bonds in respect of the payment of both principal and interest. The trustee objects to the dilution of the new junior lien by the inclusion of the western lines under such lien, it being thought that the western lines are unprofitable. The trustee further states that if the total allowable amount of new first-mortgage bonds be reduced below that fixed by the committee, the amount of such bonds assigned to the claims of the Finance Corporation, the Terre Haute bondholders, and the Northern bondholders should be scaled down, so that the reduction would not be borne entirely by the general-mortgage bondholders.

The committee's plan gives rise to a conflict between the interest of the general-mortgage bondholders and that of the 50-year-mortgage bondholders, the latter asserting that the former are required to make only a slight sacrifice, that they will receive 97 percent of the new series-A income bonds, which will represent a more extensive lien than the general-mortgage bonds now represent, and that they will benefit at the expense of the 50-year bonds.

The trustees of the debtor's convertible adjustment mortgage take the position that the holders of the adjustment bonds, who are creditors to the extent of 40 percent of the total debt of the system, should not be the only class of bondholders to sacrifice their creditor position. The contention is made that if this sacrifice is required the bondholders should be given control of the new company. Strong objection is made to the proposed voting trust, the members of which would be nominated without any representation by the adjustment-mortgage bondholders. The trustees suggest that the senior creditors be allotted a larger percentage of stock in the new plan. An increase in the total amount of new stock is deemed to be permissible on the basis of the value of the physical properties, and desirable from the standpoint of distribution of future earnings, as well as from that of a future financing medium. The trustees argue, in connection with the recognition of priorities, that section 77 permits the use of a quantative or qualitative treatment, or a combination of both, and that the issue of more stock and less bonds, as compared with

the committee's plan, would tend to a sounder reorganization. From the statements made in the trustees' brief it appears that their main objection to the plan is that the prospect of a return on the new common stock assigned to the adjustment-mortgage bondholders appears to be remote.

The trustees of the Gary mortgage consider the committee's plan to be inequitable and financially inadvisable. They object to the value accorded to the Gary, particularly that of the Rockford terminal, contend that the interest on the $3,000,000 of guaranteed first-mortgage bonds has been earned, and object to the proposed assignment of new bonds to the holders of the debtor's general-mortgage bonds 3816 and 50-year bonds, when the Gary bondholders are allotted preferred stock. The trustees ask that the plan should either leave the Gary mortgage undisturbed, curing all defaults which have occurred, or assign new first-mortgage bonds to the holders of the Gary bonds, or pay the Gary bonds in cash.

No representations were made in behalf of any class of Terre Haute bonds.

The committee representing the debtor's preferred stock considers the committee's plan unfair and not feasible, and that section 77 provides for the composition of all claims and for the retention of ownership by the stockholders. The committee regards it unjust to wipe out the large number of stockholders of this carrier, for the benefit of the creditors, at a time when earnings are low. In any event, the committee believes that an equity exists in the debtor's preferred stock on the basis of the elements of value of the property and its potential earning power. The committee, in its brief, reviews the testimony of its expert in the matter of a merger of the Milwaukee and Chicago & North Western properties, indicating that large operating savings might be expected from coordinating certain operations and abandoning certain lines. Counsel for the committee argue that such consolidation and coordination of facilities offer the best, if not the only, means of increasing the Milwaukee's earnings. They further argue that section 77 affords the only effective vehicle for consolidations.

The Finance Corporation considers that the committee's plan is based on the composition theory and that it violates the principle of the Boyd Case. (Northern Pacific *vs.* Boyd, 228 U. S. 482.) Insisting that the loans are fully secured, even more adequately secured than are the debtor's gen-

eral-mortgage bonds, the Finance Corporation regards the offer of new first-mortgage series-A bonds as inadequate and cites the testimony indicating that the new bonds would have a relatively low initial value. The Finance Corporation introduced a large amount of evidence in connection with the value of the collateral held by it. On brief, counsel calculated the amount of new securities at about $26,000,000, which, according to the committee's plan, would be exchanged for the pledged collateral, using this as a further basis of objection to the offer of new first-mortgage bonds in amount equal to the debtor's total obligation. In satisfaction of its claims, the Finance Corporation demands a cash payment in full, or new securities readily marketable for the full amount, or a repayment of part of the loans, with prior-lien bonds for the balance or a note for the balance backed by adequate securities.

Conclusions.

By reason of the debtor's long-term lease of the Terre Haute, the guarantee of its bonds, all maturing within the next 22 years, and the interdependence of the roads, a consolidation appears to be desirable in connection with this reorganization, and the Commission should find that, upon the record, such a consolidation would be in the public interest. The committee's alternative plan involves an agreement on the part of the Terre Haute bondholders to a modification of the present lease in order to waive all defaults thereunder, and to prohibit the bondholders from taking action under the mortgages with respect to any defaults which shall have occurred prior to the effective date of the plan. Even if it were possible to obtain such agreement, the maturities of the Terre Haute bonds would present a future financial problem. The debtor is of the opinion that the least modification that can fairly be asked of the Terre Haute bondholders is that all present defaults
3817 shall be waived and the maturities of their present bonds be extended to dates not earlier than those of the new first-mortgage bonds issued to the holders of bonds secured by direct liens upon the debtor's own properties. Division 4 should reject the suggested alternate treatment of the Terre Haute bondholders and provide in its plan that the Terre Haute properties be consolidated with those of the new company under the provisions of section 77(b)(5), that the lien of the new mortgages be extended to

the Terre Haute properties, and that the lease be terminated. The Governors of the 12 States in which the lines of the debtor are operated were served with copies of the committee's plan and notified of the hearing to be held thereon. They were advised of the provisions of section 77(f) permitting the Commission, upon confirmation of the plan by the court, to grant authority without further proceedings for the issue of securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's property, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of the Interstate Commerce Act, as now or hereafter amended. Division 4 should find that the consolidation of the Terre Haute properties will not be inconsistent with the provisions and purposes of that act, particularly with respect to section 5(4) thereof, as amended. The provision to be made in the plan for the holders of the Terre Haute bonds should take into account the debtor's obligation in connection with the bonds, the deficiencies in replacement of equipment, and the value of the Terre Haute lines to the system in respect of the transportation of coal and otherwise.

The committee based its proposed amount of future fixed charges on a coverage of 1.2 times the average minimum annual earnings selected, as had been explained. The annual payment to the addition and betterments fund was considered, not in connection with the debtor's past earnings, but in connection with the estimate for the future normal year, upon which basis the income available for payment of contingent interest was determined after deducting the proposed fixed interest charges and the proposed payment into the additions and betterment fund. A sounder course would be to include the obligatory payment for the fund with the proposed fixed interest charges, keeping the total within the coverage of past average earnings, determined as before. If fixed interest charges be limited to $4,000,000 and the payment to the fund be approximately $2,500,000 a year, the total, $6,500,000, would be covered about 1.2 times by the average earnings of the period 1931-35 or the period 1932-36. While this support seems adequate, it is clear that an increase over the foregoing charges would be hazardous. In two recent years, 1932 and 1935, such an amount was not earned. The trend of earnings since 1936 has been definitely downward. As compared with an income of $12,298,916 available for

interest in 1936, a deficit of nearly $400,000 in the first seven months of 1938 is shown by the trustees' monthly reports to the Bureau of Statistics of the Commission. Approximately $5,000,000 was earned during the corresponding period of 1937. The net railway operating incomes in the two 7-months' periods were $4,868,271 in 1937 and a deficit of $77,814 in 1938. The Commission is cognizant of the fact, and it is a matter of general knowledge, that the economic situation of the railroad industry continues to be uncertain as regards both revenues and expenses in the near future. Between the clear demands of a conservative policy in the present reorganization and the claims and rights of the first-lien bondholders, 3818 the limitation of fixed interest charges at $4,000,000 a year is recommended as reasonable and fair.

The total capitalization of the new company proposed by the committee, adjusted on the basis of the debt outstanding December 31, 1938, and taking the no-par common stock at $100 a share, would approximate $660,000,000, of which approximately 44 percent would be represented by funded debt. The total capitalization under the plan herein recommended would approximate $631,000,000, of which approximately 36.6 percent would be represented by funded debt. The committee's view is that the new capitalization should be limited to the present amount of debt. The last stated capitalization conforms more nearly to the present amount of debt than does the committee's total capitalization and thereby more nearly conforms to the committee's announced views. The highest figure arrived at by the committee in capitalizing the debtor's average earnings of the past, or the earnings predicted for the future, was $520,424,085, and the lowest, based on the earnings of 1930-36, was $205,407,180. These figures are indicative of the extent to which a new capitalization of $631,000,000 must find support on grounds other than the prospective earning power of the system, i. e. by a consideration of the investment in the property, its cost of reproduction new, less depreciation, and other factors. The peak earnings of 1928, as adjusted by the committee, capitalized at 5 percent, would produce the sum of $657,700,000. Under the circumstances, the new capitalization stated should not be exceeded. Counsel for the debtor contend, as has been stated, that if fixed charges should be reduced to $5,000,000 a year an unjust impairment of the present position of the debtor's senior bonds would result.

in that only a small portion of the claims of the senior bondholders could be provided for after deducting interest on the equipment obligations, the debt to the Finance Corporation, and the Terre Haute bonds. Of necessity the plan will involve sacrifices on the part of all the secured creditors. It can, however, recognize the relative status of the several classes of claims, in allocating the new securities which are deemed permissible. The final determination as to its adequateness and fairness rests with the court. A refusal by the Commission to approve any plan until present uncertainties are largely resolved and the earning power of the system is stabilized would be to delay the reorganization indefinitely. None of the parties has attempted to predict a time or describe the conditions when the making of a plan would be considered proper. This proceeding has been pending for more than three years, and, under any circumstances, cannot be concluded in the immediate future. Advantage should be taken of the progress so far made in devising a plan by providing one that will serve as a basis for the company's financial structure for the indefinite future.

The preferred position of the equipment obligations, the debt to the Finance Corporation, the bonds of the Terre Haute, and the first-mortgage bonds of the Northern is established on the record and recognized by most of the parties. The holders of equipment-trust certificates of series A to L, inclusive, have presented no objection to the deferred partial payment of maturing certificates proposed in the debtor's original plan and in the committee's plan, and now being followed under orders of the court. The other creditors mentioned above should receive equal treatment on the most favorable basis possible. Under the committee's plan they were to receive new first mortgage bonds equal to 100 percent of the total claims. Under the recommended plan this equality of treatment will be preserved, but, due to the necessity for reducing the total fixed interest debt, the new assignment will be on the basis of 50 percent in fixed interest bonds and 50 percent in series A income bonds. Assuming the contingent interest to be earned, the average return on these new securities would be 4 percent. This will mean a sacrifice of 1 percent interest in the case of three issues of Terre Haute bonds and ¼ of 1 percent in the case of the Northern's first mortgage bonds. A further sacrifice will be entailed by the contingent interest feature applying to

50 percent of the new securities. However, these creditors will receive a larger proportion of the total amount of new first mortgage bonds and series A general mortgage bonds than they would receive under the committee's plan. If the rights of the Northern consolidated mortgage bonds and the debtor's general mortgage bonds are to receive equitable treatment it is apparent that a larger proportion of the new first mortgage bonds cannot be allocated to the claims in question.

In settlement of the claims of the holders of Northern consolidated mortgage bonds and the debtor's general mortgage bonds the committee assigned new first mortgage bonds equal to 60 percent and new income mortgage bonds equal to 40 percent of such claims, on the basis of the showing of approximately equal earning power for the lines subject to these mortgages, respectively. This equality of treatment should be preserved. Under the capital structure now contemplated, however, it is necessary to modify the committee's allocations by dividing its allocated fixed interest bonds into equal proportions of new fixed interest and new contingent-interest series A bonds, and by similarly dividing its proposed series-A general mortgage bonds into new series-B bonds and preferred stock.

The degree by which the foregoing claims rank superior to the 50-year bonds is not susceptible of exact determination. On brief, counsel for the committee discuss all the evidence in this connection and contend, with reason, that even if all the doubts are resolved in favor of the 50-year mortgage, the treatment proposed by the committee is liberal. As has been shown, the distribution of earnings between the several mortgage divisions of the system for the year 1936, relied on by the committee in connection with its treatment of the 50-year mortgage bonds, was attacked on the score of accuracy, the expert witness testifying that as much as $2,000,000 of the net earnings of the system in that year might be properly applicable to the 50-year mortgage bonds. It was also contended that, in view of their virtual first lien on the lines west and "pieces of lines east", and second lien on the properties subject to the first lien of the debtor's general mortgage, the Northern first mortgage, and the Gary first mortgage, no compensation is given under the committee's plan for the loss of lien which would result from this plan, while the general-mortgage bondholders would receive new

bonds representing an extension of the present lien to include the lines west, the Terre Haute, and the Gary.

In the matter of earnings, the inaccuracies in the computations for 1936 would have to be large in order to wipe out an indicated net deficit of nearly $1,000,000 from the operation of the lines west, and "pieces of lines east", even assuming the dividends and interest from securities pledged under the first and refunding mortgage to offset the interest in the amount of first and refunding mortgage bonds pledged. On the basis of the average net income available, 1931-1936, no interest on the 50-year mortgage bonds was earned after the payment of interest on equipment obligations, the loans from the Finance Corporation, the Terre Haute bonds, the Northern bonds, and the general-mortgage bonds. On an average basis in 1930-36, approximately 25 percent of the interest was earned and in 1936 approximately 62 percent.

The facts do not appear to justify the allocation of new bonds for 40 percent of this claim, as proposed by the committee, particularly when the total debt of the sys-
3820 tem is to be reduced substantially from that contemplated by the committee. Under the plan herein recommended the 50-year bonds are assigned equal proportions of series A and series B general mortgage bonds for 20 percent of the claim, preferred stock for 60 percent, and common stock for 20 percent. A more favorable assignment is precluded by the limitation on the capitalization of the new company and by the magnitude of the claims which are senior to the 50-year bonds. It may be pointed out that under the committee's plan, adjusted to January 1, 1939, the aggregate principal amount of equipment obligations and new bonds ahead of the new series-B general mortgage bonds (the highest grade security assigned to the 50-year bonds) would be approximately $237,700,000, and the annual charges thereon, together with the payment to the additions and betterments fund, would amount to about $12,384,000. Under the recommended plan the principal amount of debt ahead of the new preferred stock (to be issued for 60 percent of the claim of the 50-year mortgage bonds) would be about $230,813,000 and the annual charges about $11,986,000. In connection with this comparison it may be further noted that although common stock is now proposed to be issued against 20 percent of the claim, general mortgage bonds,

ranking ahead of the preferred stock, are to be issued in the same proportion.

The committee's proposal to allot, in addition to other securities, one share of new common stock to each $1,000 of claim of the holders of the Northern bonds and general-mortgage bonds, should be rejected for the reasons stated by counsel for the debtor, viz, that the settlement with creditors should be limited to a realization of the principal and interest of their debts and that a bonus in the form of stock is unnecessary for a full recognition of existing priorities.

Under the recommended plan, the maximum permissible amount of new bonds and preferred stock will have been allocated before provision is made for the convertible adjustment-mortgage bonds outstanding. The total system debt ahead of these bonds, as of December 31, 1938, will be approximately $358,500,000 and the annual charges on only the principal thereof will be about $14,462,000. On the basis of the predicted normal earnings, but not on the basis of any year since 1930, is an equity shown for the bonds of this class, while the total claim as of December 31, 1938, will amount to $262,423,748. New common stock should be offered in exchange for the present adjustment bonds, as proposed by the committee, i. e., on the basis of one share for each $100 of bonds, and accumulated interest.

The allotment of one share of new common stock to each $100 of claim of the Gary bondholders for principal and accrued interest is consistent with the evidence pertaining to the earnings of this line and its utility to the system. During the period prior to 1930, when separate books were kept, the Gary failed to earn the $150,000 of interest on its guaranteed bonds in 1922, 1923, 1924, 1927, and 1928. The studies made for certain subsequent years show that the income available for interest was $142,000 in 1933, $60,000 in 1934, and $54,161 in 1936. But approximately 50 percent of the total revenues in all these years represented Milwaukee traffic, largely coal, which could have been moved over the Milwaukee line via Bensenville and Kirkland. Withdrawing such revenues and substituting the estimated cost of moving the traffic via Bensenville, there would have been a deficit of $45,816 in the Gary's net income available for interest in 1936. Giving effect to the earnings of the other parts of the system in connection with the Gary traffic, including that of the Rockford terminal, the debtor computed the net earnings in 1936 at $48,933. The Gary

line, in effect, is cut in two by the trackage operation over the Elgin, Joliet & Eastern Railway, under a burdensome trackage agreement.

The balance sheet of December 31, 1937, shows the capital liabilities of the debtor, other than capital stock, 3821 together with total current liabilities, deferred liabilities, tax liability, premium on funded debt, and other unadjusted credits, as $608,266,998. Deducting all book assets, other than those representing total investments, the net debt shown by this balance sheet was $570,748,282. The total of funded debt unmatured, including that of the Terre Haute, loans and bills payable, funded debt matured unpaid, interest matured unpaid, unmatured interest accrued, and accrued interest on the adjustment-mortgage bonds was $606,107,641. As of December 31, 1938, the total funded debt of the system will be approximately $502,583,109, and the amount of interest accrued and unpaid $118,775,714, a total of $621,358,823.

The debtor's investment in road and equipment as of December 31, 1937, was $691,592,842, and that of the Terre Haute, as of December 31, 1936 (the latest statement of record), was $28,418,480, a total of $720,011,322.

The cost of reproduction of the system properties, less depreciation, plus the value of lands and rights, an allowance for working capital, and the net additions and betterments reported by the carriers in 1936 and 1937, was $662,759,838. The report of the Bureau of Valuation, upon which this figure is based, has been mentioned earlier herein.

The record of the Milwaukee's earnings in the past has been reviewed. The last year when dividends were paid on the stock was in 1916. Between 1930 and 1936 the income available for payment of interest, as adjusted by the committee and accepted by the debtor, varied between a high level of $20,298,074 and a low of $2,680,530, with an average of $10,270,360. The future normal earnings were estimated by the committee, as has been stated, at $15,894,000 a year. Interest accruals on the principal of the present debt, without considering unpaid interest, amount approximately to $23,600,000 a year. The average earnings in 1930-36, capitalized at the low rate of 4½ percent, produces the sum of $228,230,000, and the estimated normal earning, similarly capitalized, the sum of $353,200,000. The discrepancy between investment and reproduction cost on

the one hand, and assets as indicated earning power on the other, is so marked, and the latter falls so far below that corresponding to the total debt outstanding, that a finding of equity in the debtor's present stock depends, in substance, upon the degree to which the carrier's predepression earning power may be considered to be recoverable. Counsel for the debtor contend that the existence of a high earning power only 10 years ago indicates the injustice of resolving all uncertainties for the future in such a manner as to forfeit the stock, and that, even with the continuation of a lower earning power a subtsantial equity nevertheless would remain for the debtor's preferred stock and common stock, each representing money actually invested in the property. Accordingly, the debtor proposes that warrants for the purchase of new stock shall be issued to the present stockholders, on the terms which have been described. This plan was adopted primarily as a means of enabling the stockholders to recoup their present investment, and it was also designed to provide the new company with substantial amounts of new money. Counsel for the debtor contend that it would in no wise impair any of the priorities of the debtor's creditors as against the stockholders. This view is not shared by counsel for the committee.

In appraising the equity in the debtor's present stock, if any, a recovery of the peak earnings of 1928 and 1929, approximately $30,000,000 a year, would be an unjustifiable assumption in the light of present indications. Predepression averages show $20,964,421 a year for the period 1921-30, and $24,459,932 a year for the period 1925-29. On the basis of the latter figure, which is the highest that can be considered reasonably in this connection, a prospective value in the present preferred stock is indicated. But, since capitalization of this figure at 5 percent gives 3822 less than $500,000 there can be no question but that the common stock is valueless. The approved plan should provide that the holders of the debtor's preferred stock are entitled to participate in the plan to the extent hereinafter stated, i. e., by receiving warrants to purchase a specified amount of new common stock.

Division 4 should find that the equity of the hoiders of the debtor's common stock has no value and the holders of claims in class 25, therefore, are not entitled to participate in the plan.

Below is shown a comparison between the present funded debt and capital stock of the system, as of December 31, 1938, and that herein proposed, subject to a final determination of exact amounts.

	Present	Proposed
Fixed interest debt	[1] $620,921,677	$105,895,179
Contingent interest debt		124,918,119
Preferred stock	119,307,300	108,675,970
Common stock, taken at $100 a share	117,406,000	291,521,400
Total	$857,634,977	$631,010,668

The annual charges applicable to the present capital structure and those under the recommended plan are shown below.

	Present	Proposed
Fixed interest	[2] $ 23,606,095	$ 3,864,602
Adds.-betts. fund		[3] 5,000,000
Contingent interest		5,621,315
Sinking fund	1,139,000	624,590
Dividends on pref. stock	5,965,365	5,433,798
Dividends on common stock at $3.50 a share	4,109,210	10,203,249
Total	$ 34,819,670	$ 30,747,554

Division 4 should find, from a consideration of the record and the prospective earning power of the system, that there will be adequate coverage of the above-stated amount of fixed charges of the new company by the probable earnings available for the payment thereof.

Recommended Allocation of Securities.

Appended to this report is a table showing the approximate amounts of securities and claims outstanding and the allocation of new securities recommended.

Claims not affected by the plan should include (1) equipment-trust certificates of series M and series N, together with trustees' equipment-trust certificates of any series

1. Includes $118,775,714 of unpaid interest; is subject to adjustment for changes in amount of equipment obligations, short-term loan, etc., outstanding.
2. On principal only.
3. One-half discretionary.

which shall have been issued and are outstanding on the effective date of the plan, (2) all lease agreements not disaffirmed by the trustees of the debtor, except the Terre Haute lease, which should be canceled, (3) current liabilities incurred in the ordinary conduct of business prior to the institution of this proceeding which are entitled to priority over any mortgage bonds of the debtor, and (4) liabilities of the debtor under terminal company guaranties not disaffirmed by the trustees.

Equipment-trust certificates of series A, C, D, E, F, G, H, J, K, and L, not fully paid on the effective date of the plan should remain undisturbed as to lien and interest but the principal thereof should be paid at the rate of 20 percent of each installment annually in accordance with the arrangement proposed in the debtor's original plan and now being followed by the debtor's trustees, as has been described. Obligations under miscellaneous agreements for the lease of equipment should be assumed by the new company.

All interest due on the indebtedness to the Finance Corporation should be paid in cash up to the effective date of the plan and the principal of the debt should be discharged by the allotment to the Finance Corporation of $6,605,232 of new first-mortgage 3½-percent bonds and $6,605,231 of general-mortgage series-A 4½-percent bonds. Upon receiving such bonds, the Finance Corporation should surrender all the collateral held by it as security for the loans to the debtor, together with the $258,000 of first and 3823 refunding mortgage bonds now pledged as additional collateral security for equipment-trust certificates, series M. All securities so surrendered should be canceled.

The holder of each Northern first-mortgage bond, Southern Indiana Railway Company first-mortgage bond, Bedford Belt Railway Company first-mortgage bond, Terre Haute first and refunding mortgage bond, and Terre Haute income bond outstanding should receive in exchange therefor $500, principal amount, of new first-mortgage 3½-percent bonds and $500, principal amount, of new general-mortgage series-A 4½-percent bonds in settlement of the full amount of the principal of the claim in each case. Interest on the present bonds should be paid or adjusted up to the effective date of the plan at the rates provided in the bonds.

All accumulations of fixed interest on the debtor's obliga-

tions should be treated in the plan on a parity with the principal of the debt.

The holder of each $1,000 Northern consolidated mortgage bond, with interest fully paid to December 31, 1938, should receive in exchange therefor $300 principal amount, of new first-mortgage 3½-percent bonds, $300 of new general-mortgage series-A 4½-percent bonds, $200 of new general-mortgage series-B 4½-percent bonds, and $200, par value, of new preferred stock. The holders of any Northern consolidated mortgage bonds with interest unpaid thereon should receive amounts of the above-stated securities in the same proportions, applied to the principal of the bonds plus unpaid interest up to the effective date of the plan.

The holders of the debtor's general-mortgage bonds of series A, B, C, E, and F outstanding, should receive, for each $1,000 bond and all unpaid interest thereon; approximately $338, principal amount, of new first-mortgage 3½-percent bonds, $338, of new general-mortgage series-A 4½-percent bonds, $225 of new general-mortgage series-B 4½-percent bonds, and $225, par value, of new preferred stock, representing 30 percent, 30 percent, 20 percent, and 20 percent, respectively, of the principal of such bond plus unpaid interest up to the effective date of the plan.

The holders of the debtor's 50-year mortgage bonds outstanding should receive for each $1,000 bond and all unpaid interest thereon, approximately $119.50, principal amount, of new general-mortgage series-A 4½-percent bonds, $119.50 of new general-mortgage series-B 4½-percent bonds, $717.50, par value, of new preferred stock, and 2.4 shares of new common stock, representing 10 percent, 10 percent, 60 percent, and 20 percent, respectively, of the principal of such bonds plus unpaid interest up to the effective date of the plan.

The holders of the Gary first-mortgage bonds outstanding should receive for each $1,000 bond and all unpaid interest thereon, up to the effective date of the plan, approximately 12 shares of the new common stock.

The holders of the debtor's convertible adjustment mortgage bonds outstanding, should receive in exchange for each $1,000 bond and all unpaid interest thereon up to the effective date of the plan, approximately 14.3 shares of the new common stock.

The holders of the debtor's present preferred stock outstanding should receive, for each share of such stock, a

warrant to purchase one-half share of new common stock at the price of $30 a share to and including December 31, 1943, thereafter to and including December 31, 1948, at $40 a share, and thereafter to and including December 31, 1953, at $50 a share.

The plan should provide for the issue of scrip for sums less than $100 in the case of bonds and for fractional shares of stock.

The unsecured claims of general creditors, not entitled to preference, should be allotted one share of new common stock for each $500 of claim allowed by the court.

3824 The new or reorganized company should assume the liability for, and pay in due course, any and all taxes due to the United States from the debtor or its trustees for any taxable period prior to the date of confirmation of the plan, without requiring proof thereof and without prejudice by reason of not having been proven.

All existing mortgages secured by liens on the properties of the debtor, including the Northern and Gary lines, and on the properties of the Terre Haute, other than equipment obligations and purchase money liens, should be canceled and discharged, and all bonds issued under such mortgages, either pledged or in the possession of the debtor, should be canceled.

Description of New Securities.

The new first-mortgage bonds should be unlimited in authorized principal amount and the mortgage should constitute a first lien, subject only to purchase money liens, on all properties and assets owned by the new or reorganized company on the consummation of the plan or thereafter acquired, including securities, equipment, and the equity in equipment subject to equipment obligations, with appropriate provision in the event of consolidation. It should provide for issue of bonds in different series. The mortgage should provide for the issue of approximately $67,134,468, principal amount, of bonds for the purpose of exchange for existing obligations, as hereinbefore specified, such bonds to bear interest at the rate of 3½ percent per annum, payable semiannually, and to mature in 50 years. They should be redeemable as a whole or in part on any interest payment date on 30 days' notice, and at any other time at 60 days' notice, both by publication, at par and accrued interest, plus a premium of 5 percent if redeemed

prior to January 1, 1940, and if redeemed thereafter, at par and accrued interest plus a premium of 5 percent, decreased by one-fourth of 1 percent for each two years elapsed after January 1, 1940, until January 1, 1979, and thereafter at par and accrued interest.

Provision should be made for the issue of not exceeding $10,000,000, principal amount, of additional first-mortgage bonds to be sold to provide the new company with funds for additions and betterments, working capital, and the payment of the expenses of reorganization, as may be determined by the reorganization committee, hereinafter described, and approved by the Commission. These bonds should bear fixed interest at not exceeding 4½ percent per annum, have a term not less than 25 years, and should be sold on terms to be approved by the Commission. In determining the amount of bonds to be issued for the above-stated purposes, consideration should be given to funds which may become available for capital expenditures from the sale of new common stock through the exercise of warrants.

Additional bonds should be issuable under the first mortgage after the reorganization, bearing interest at rates not exceeding 3½ percent per annum, and maturing not earlier than January 1, 1989 (except in the case of bonds issued for the acquisition of equipment), with provisions regarding sinking funds, taxes, premiums, etc., as prescribed by the board of directors, subject to approval by the Commission. Such additional bonds should be issuable in amounts up to 65 percent of the capital cost of additions and betterments to roadway and structures, after appropriate deduction for property retired, for the acquisition of fixed property or the securities of companies owning lines of railroad connecting with the lines of the new company's system, for the purchase of new equipment free from any other lien, for the refunding of any first-mortgage bonds, and on the basis of deposited cash, provided, however, that no such additional bonds should be issuable, except for the purpose of refunding or on the basis of deposited cash, unless the income of the new company available for the payment of interest, after interest on existing first-
3825 mortgage bonds, the bonds proposed to be issued, all equipment obligations, and any obligations secured by lien on a parity with that of the first-mortgage bonds, shall have amounted to 1½ times the aggregate thereof

during a period of 18 calendar months immediately preceding the month in which the application for the issue of such additional bonds shall be made.

In the case of first-mortgage bonds which may be issued after the reorganization for the acquisition of equipment, their term should not exceed the estimated life of such equipment, or in any event 15 years, and a sinking fund should be created sufficient to retire the bonds within their term. No sinking fund should be provided in connection with the bonds issued in the reorganization.

The first mortgage should provide that the principal amount of bonds to be pledged as collateral security shall never exceed 150 percent of the amount of the indebtedness so secured.

The new general mortgage should constitute a lien on the properties and assets of the new company subject only to the lien of the first mortgage and liens upon equipment, and the bonds issuable under this mortgage should be unlimited in amount. For the purposes of the reorganization, there should be issued approximately $79,857,548, principal amount, of series-A bonds and approximately $45,060,571, principal amount, of series-B bonds, with terms of 65 years and 75 years, respectively, each secured equally under the mortgage as to principal, bearing interest at the rate of 4½ percent per annum, contingent upon available net income, payable annually on April 1 and cumulative to a maximum of 13½ percent, whether for consecutive or nonconsecutive income periods. The payment of interest on the series-B bonds should be subordinate to that on the series-A bonds. Either series should be redeemable for the sinking fund at any time on 60 days' notice at par value plus accrued and unpaid interest, and otherwise as a whole or in part on any interest payment date on 60 days' notice, and at any other time on 90 days' notice at 101 percent of face value, if redeemed on or before January 1, 1979, and thereafter at face value plus accrued and unpaid interest. The series-B bonds should be convertible into the common stock of the new company at the option of the holders at the rate of 15 shares of stock for each $1,000 bond, with appropriate provision for adjustment of interest and dividends, stock dividends, etc.

The general mortgage should permit the issue of additional bonds upon approval of two-thirds of the members of the board of directors and the approval of the Com-

mission. Such bonds should be issuable in different series, have a term of not less than 65 years, and rates of contingent interest not exceeding 4½ percent per annum. Otherwise, the provisions of the additional bonds should be as provided by the board of directors at the time of the issue, subject to the general terms of the mortgage and the approval of the Commission. Such additional bonds should be issuable in amounts, less the amounts of any first-mortgage bonds which may have been issued, up to 65 percent of capital expenditures, as prescribed for the first-mortgage bonds, for the refunding of bonds prior to or on a parity with the general-mortgage bonds, and on the basis of deposited cash, provided, however, that no additional bonds should be issuable, except for the last two purposes, unless there is no accumulation of unpaid interest on the general-mortgage bonds outstanding.

The debtor's suggested restrictions on future issues of first-mortgage bonds and general-mortgage bonds might prove impracticable in practice. In any event, such future issues will be subject to approval by the Commission, which will give consideration to the financial conditions then existing and the necessity for the proposed issue. The 65 per cent limitation on capital expenditures which may be capitalized by bonds, as herein recommended, should not be considered a reason for increasing the additions and betterments fund. By permitting payments up to $5,000,000 a year into this fund the plan is deemed sufficiently liberal to allow for the change from the 75-percent limitation proposed by the committee and adopted by the debtor, 3826 to the limitation now recommended.

In the case of general-mortgage bonds which may be issued for the acquisition of equipment, their term should not exceed the estimated life of such equipment, or in any event 15 years, and a special sinking fund should be created sufficient to retire the bonds within their term. For the retirement of general-mortgage bonds issued in the reorganization, a sinking fund should be provided requiring payments from available net income, after the payment of the contingent interest on the general-mortgage bonds, at the rate of one-half of 1 percent per annum of the aggregate principal amount of bonds issued.

The general mortgage should provide that the principal amount of bonds to be pledged as collateral shall never exceed 150 per cent of the amount of the indebtedness to be secured thereby.

The new preferred stock should be authorized in unlimited amount, subject to the laws of the State or States in which the new company shall be incorporated. Approximately 1,086,760 shares of series-A stock should be issued in the reorganization. It should have a par value of $100 a share and be entitled to dividends at the rate of 5 percent in any 12-month income period, noncumulative whether or not earned, but no dividends should be permitted to be paid on the new common stock unless full dividends shall have been paid on the preferred for the three preceding calendar years. The new series-A preferred stock should be redeemable, at the option of the new company, in whole or in part, at any time on 30 days' notice, at its par value plus any unpaid dividends which shall have been declared thereon. After dividends shall have been paid or declared on the common stock at the rate of $3.50 a share in respect of any income period, each share of preferred stock should be entitled to participate equally with each share of common in any additional dividends paid or declared to the extent of $1 a share in respect to such income period. In the event of dissolution or liquidation of the new company, the holders of the preferred stock, series-A, should be entitled to receive the par value of their shares, with all dividends that shall have been declared thereon, before any distribution shall be made to the holders of the common stock, but should not be entitled to share in any assets thereafter remaining. The holder of each share of series-A preferred stock should not be entitled to vote equally with each share of common stock.

The plan should provide that other series of preferred stock may be issued subsequent to the reorganization, with dividends at such rates and with such provisions regarding par value, voting power, redemption, etc., as may be prescribed by the board of directors and approved by the Commission, provided that, so long as any shares of series-A stock shall be outstanding, no additional series, ranking with or ahead of series-A, shall be issued without the consent of the holders of at least a majority of the shares of series A.

The new common stock should be unlimited in authorized amount, subject to applicable State laws, should be without par value, and, each share should be entitled to one vote. Approximately 2,915,214 shares should be issued in the reorganization, 675,909 shares should be authorized and reserved for issue on the conversion of the general-

mortgage bonds, and 596,536 shares should be reserved for issue on the exercise of the warrants contemplated under the plan. Additional common stock may be issued only with the approval of the Commission in further proceedings.

The warrants to be issued to the holders of the debtor's preferred stock should carry the right, in respect of each share of present preferred, to purchase one-half share of new common stock on the basis hereinbefore stated. The agreement under which the warrants would be issued should provide that the purchase price of the common stock may be paid in whole or in part by the surrender to the new company of general-mortgage bonds, of series A or series B, bearing all unpaid coupons, at the principal amount of such bonds, flat, in which case the bonds received should be canceled. Any cash proceeds from the exercise of the warrants should be applied to capital expenditures made not more than 12 months after the receipt thereof, and, to the extent not so applied, should be added to the sinking fund for the general-mortgage bonds.

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Capital Funds; Application of Available Net Income.

The approved plan should require the new company to create a reserve and retirement fund to be used in connection with the purchase of equipment, improvements to equipment, etc., and an additions and betterments fund to be used primarily for additions and betterments to roadway and structures, as proposed in the committee's plan and the modifications thereof suggested by the debtor. Both new mortgages should contain covenants providing for these funds. Payment into the reserve and retirement fund should be made, prior to a specified date each year, of an amount equal to the total charge made by the new company for depreciation of equipment, under the accounting regulations of the Commission, for the preceding calendar year, together with such payments out of the additions and betterments fund as may be available under the provisions of that fund. The fixing of a minimum annual payment into the reserve and retirement fund, as provided in the committees' plan, does not appear to be justified. This fund should be segregated from the general funds of the new company and used for, or to reimburse the new company for, expenditures for the following purposes, in order: (1) The payment of equipment-trust obligations and sinking funds for bonds issued against the purchase of

equipment; (2) the payment of cash on account of the cost of new equipment; (3) the cost of replacement of vacancies in equipment trusts; (4) the cost of replacement of property retired, to the extent chargeable to capital account; and (5) additions and betterments to equipment chargeable to capital account required to maintain the efficiency of the system unimpaired. To the extent that such expenditures are provided by the reserve and retirement fund, the new company should not be permitted to capitalize same by the issue of securities ranking ahead of the new preferred stock, but such expenditures may be taken into account, if for purposes for which first-mortgage or general-mortgage bonds might be issued, in determining the total amount of capital expenditures in respect of 65 per cent of which new bonds might be issued. Further detailed provisions for this fund need not be fixed by the Commission but may be left to the judgment of the reorganization committee in connection with the drafting of the new mortgages.

Payments into the additions and betterments fund should be made prior to a specified date each year, out of the available net income of the preceding income period, prior to the payment of contingent interest, the new company being required to set aside, to the extent of such available net income, 2 per cent of its total railway operating revenues, or the sum of $2,500,000, whichever is the larger. The amount by which any annual payment shall be less than $2,500,000 should become cumulative against earnings for the succeeding year, provided, however, that no payments shall be mandatory if the unappropriated amount in the fund is in excess of $5,000,000. Subject to these conditions, and to the extent of available net income, the board of directors of the new company should be permitted to increase the amount paid into the additions and betterments fund in any year within the prescribed limit of $5,000,000. The additions and betterments fund should be segregated from the general funds of the new company and should be used to provide for, or reimburse the treasury of the new company for, the cost of additions and betterments and other expenditures chargeable to capital account under the accounting regulations of the Commission, including initial and principal payments upon equipment acquired through equipment trusts or conditional sale agreements. Where reimbursement is made for such payments on equipment,

it should not extend to payments made prior to the
3828 beginning of the preceding calendar year or income period. To the extent that capital expenditures shall be so provided out of this fund, they should not thereafter be permitted to be capitalized by the issue of any securities ranking prior to or on a parity with the preferred stock of the new company, provided that, subject to the foregoing restriction such expenditures may be taken into account in determining the total capital expenditures in respect of 65 per cent of which new first-mortgage or general-mortgage bonds may be issued. Any unappropriated amount in the additions and betterments fund in excess of $5,000,000 at the end of any calendar year should be paid into the reserve and retirement fund, and any unappropriated amount in the latter fund, in excess of $5,000,000 at the end of any calendar year, should be applied to the retirement of the funded debt of the new company. Further provisions for the additions and betterments fund should be left to the discretion of the reorganization committee.

The available net income of the new company should be determined for each calendar year, herein called income period, beginning January 1, 1939, as promptly as possible after the termination thereof, by deducting from the consolidated income available for fixed charges of the company and its railroad subsidiaries all fixed charges, as defined by the accounting regulations of the Commission, during such period, together with the amount, if any, by which the company shall have failed to earn its fixed charges in the preceding income period. If the new company shall not have come into ownership and possession of the properties now operated by the trustees on or before January 1, 1939, the available net income should nevertheless be computed as if the new company had come into possession and the new securities had been issued as of that date.

As so computed, the available net income for each income period should be applied to the following purposes in the following order:

1. To the payment on or prior to April 1 of each year of the mandatory annual installment to the additions and betterments fund, together with such additional sum as may be determined by the board of directors, subject to the conditions stated above;

2. Any then remaining available net income should be applied to the payment, on April 1 of each year, beginning

April 1, 1940, of the contingent interest on the new general-mortgage series-A bonds issued in the reorganization, the payment of accumulated interest, if any, to precede the payment of current interest;

3. Any then available net income should be applied to the payment on April 1 of each year, beginning April 1, 1940, of the contingent interest on the new general-mortgage series-B convertible bonds, the payment of accumulated interest, if any, to precede the payment of current interest;

4. Any then remaining available net income should be applied to the sinking fund created for the retirement of first-mortgage bonds, if any, issued subsequent to the reorganization for the acquisition of equipment, to the extent of 65 per cent of the net cost thereof, the terms of such fund to be determined by the board of directors, subject to approval of the Commission;

5. Any then remaining available net income should be applied on April 1 of each year, or as may be provided in the general mortgage, to the sinking fund or funds for the retirement of general mortgage bonds, the payments to be in amounts up to but not exceeding one-half of 1 percent of the aggregate principal amount of bonds outstanding (except that a different rate may be applied in the case of a sinking fund for general-mortgage bonds issued for the acquisition of equipment on the basis herein described), and such payments should be noncumulative. The priority of such payments as between the sinking funds created for the several series of bonds should be as provided in such bonds;

6. Any then remaining available net income should be applied, as the board of directors may determine, to dividends on the several classes of stock in the order of
3829 their priority, or to other proper corporate purposes.

Miscellaneous Provisions.

The effective date of the plan should be January 1, 1939. The plan should be carried out under the supervision of a reorganization committee, consisting of five members, one to be designated by the trustee of the debtor's general mortgage, one by the trustees of its 50-year mortgage, one by the trustees of its adjustment mortgage, one by the trustees of the Terre Haute mortgages acting collectively, and one by the Finance Corporation. The reorganization committee should be authorized to fill vacancies created by death,

resignation, or otherwise, preserving the representation of the several interests as before. The committee should determine the method of carrying out the plan, subject to approval of the court, and the form, except as herein otherwise expressly provided, and provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan.

The plan should be carried out either by vesting the properties of the Milwaukee and its affiliated railroad companies, together with the property held by the trustees, in the reorganized Milwaukee corporation or in a new corporation created for the purpose of this reorganization, and by the execution by the reorganized or new company of the new mortgages and the issue by it of the new securities contemplated under the plan. The merger or consolidation of the Terre Haute should be effected in a manner to be determined by the reorganization committee, subject to the approval of the Commission and the court.

The provision proposed by the committee for the sale of all or any part of the property at public auction in the event of failure of acceptance by any class of creditors is clearly inconsistent with the provisions of the act, in that it is operative upon failure of acceptance by more than one-third in principal amount of the claims in the class, while section 77 requires acceptance only by more than two-thirds of those voting in each class. The limitation upon the power of the court proposed by the committee should not be approved. Spokane International Ry Co. Reorganization, 228 I. C. C. 387. Likewise, the similar provision proposed by the debtor appears to be needlessly harsh and restrictive in permitting a sale of all or any part of the property of the debtor unless the plan is accepted by all classes of creditors and stockholders found to have an interest therein. Under this provision, the various groups of creditors find themselves in no more advantageous position than under the procedure of an equity reorganization. While ostensibly permitted to accept or reject a plan submitted to them under section 77, they must either accept the plan, whether or not they are satisfied with it, or take their chances upon receiving satisfactory compensation for their rights in the property upon a sale at an upset price to be fixed by the court. The unsatisfactory nature of the latter remedy constituted one of the reasons for the adoption of the present reorganization statutes. Furthermore, it would appear that sale of any part of the debtor's property at an

upset price different from the total principal amount of securities allocable to that property under the proposed plan, would upset the proposed allotment of securities to the remainder of the securitiy holders, and require that the plan be returned to the Commission for further consideration.

Section 77(c) provides that a plan may be confirmed by the court, without acceptance by each class of creditors and stockholders provided the judge is satisfied that "it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph" of subsection (c). There is here no specific provision that a plan must provide for a sale of the property of the debtor, nor that the plan must contain specific alternate provisions for dissenting classes of creditors or stockholders, in addition to the provisions of the rejected plan. The requirement as a prerequisite to confirmation of a rejected plan, that the judge be satisfied that such rejection is not reasonably justified, affords support for the conclusion that it was the intent of Congress that the provisions of the plan itself rather than any alternative provisions for dissenting classes should form the basis for confirmation. The only reasonable conclusion is that such alternative provision was not considered as indespensible to confirmation of a rejected plan.

3830.

The act clearly leaves to the judge the question of the adequacy of the provision in a plan for dissenting classes of creditors and stockholders. The need for an alternative provision may well be determined by the circumstances of each case and the results of the submission. Even if alternative provisions be deemed requisite, there are courses of procedure other than sale of the property which may be considered adequate. Situations may arise in which sale of a part of the property of the debtor or its affiliates may be necessary to consummate the plan. The Commission should not approve the provision for sale of the debtor's property in either of the plans presented to it. The plan approved by it should provide that it must be accepted and confirmed in accordance with the provisions of section 77. *Western Pacific Railroad Company Reorganization.*

I. C. C. Thus the discretionary power of the judge will be preserved.

The new charter, or an amendment of the present charter, should provide that the board of directors of the new company consist of not less than 7 nor more than 15 members, to be elected by the stockholders.

For the reasons advanced by the committee, a voting trust should be created into which all the new preferred and common stock should be placed, and voting-trust certificates should be issued therefor. The trustees should be five in number; two to be designated by the committee of the investors' group, two by the stockholders of the new company, and one by the Finance Corporation, the latter to continue to act as trustee only so long as the Finance Corporation shall continue as a creditor of the new company. Vacancies occurring among the voting trustees should be filled by a majority vote of the remaining voting trustees. Such voting trust should continue until 10 years from the date of confirmation of the plan or until such earlier time as dividends on the new preferred stock shall have been paid in full for three consecutive years.

The by-laws of the new company should provide for a finance committee consisting of not less than three members of the board of directors, to exercise supervision over all financial matters under prescribed directions. The functions of this committee need not be prescribed in detail in the approved plan.

Division 4 should approve the plan of reorganization and consolidation herein described and should find that such plan will meet with the requirements of section 77(b) and (c) of the Bankruptcy Act, as amended, and be compatible with the public interest; and should render a report and enter an order approving such a plan. Modification of the accounts of the debtor and the other companies involved, as a result of the plan finally adopted, should be subject to the approval of the Commission, and the reorganized or new company should submit its journal entries for such approval before making its permanent accounting records.

In view of the provisions of section 77(f), the Commission, when a plan shall have been finally adopted, should give consideration to the granting of such authority as may be requisite and appropriate for the execution of the plan, including the issue of securities.

	Principal and accrued interest to January 1, 1939	Recommended Plan						
		Undisturbed or partly extended	First mtge. 3½% bonds	General mortgage 4½% bonds Series A	4½% bonds Series B, conv.	Preferred 5% stock	Common stock n.p.v. shares	Warrants expressed in shares of n.p.v. stock
	$	$	$	$	$	$		
Equipment obligations	28,760,711	28,760,711						
R. F. C. loans	13,210,463		(50%) 6,605,232	(50%) 6,605,231				
Terre Haute bonds	21,929,000		(50%) 10,964,500	(50%) 10,964,500				
Northern first mtge. bonds	2,117,000		(50%) 1,058,500	(50%) 1,058,500				
Northern consol. mtg. bonds	5,319,260		(30%) 1,595,778	(30%) 1,595,778	(20%) 1,063,852	(20%) 1,063,852		
General mtge. bonds	156,368,193		(30%) 46,910,458	(30%) 46,910,458	(20%) 31,273,639	(20%) 31,273,638		
50-yr. mtge. bonds	127,230,802			(10%) 12,723,080	(10%) 12,723,080	(60%) 76,338,480	(20%) 254,462	
Gary first mtge. bonds	3,562,500						(100%) 35,625	
Adjustment mtge. bonds	262,423,748						(100%) 2,624,237	
Unsecured claims	445,162						(20%) 890	
Preferred stock	119,307,300							596,536
New money			10,000,000*					
Totals		28,760,711	77,134,468	79,857,548	45,060,571	108,675,970	2,915,214	596,536

* Subject to reduction through proceeds of warrants.

4515 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 17th day of November, A. D. 1938.

(Caption—10882)

Upon consideration of the record in the above-entitled proceeding and the petition filed on behalf of the Railway Labor Executives' Association for leave to intervene herein:

It is ordered, That the said Railway Labor Executives' Association be, and it is hereby, permitted to intervene and participate in the proceeding from this date and be treated as a party hereto; and

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding; and that a copy of this order be served upon all other interested parties.

By the Commission, division 4.

W. P. Bartel,
Secretary

(Seal)

3838 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 21st day of November, A. D. 1938.

Finance Docket No. 10881.

Chicago & North Western Railway Company Reorganization.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization.

The protective committee for holders of common stock of the Chicago and North Western Railway Company and the protective committee for holders of the preferred stock of

the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, interveners in the above-entitled proceedings, respectively, having filed petitions therein on October 26, 1938, for permission to present a plan of reorganization involving a consolidation of the properties of the aforesaid debtors, copies of such plan being transmitted therewith, the petitioners requesting that a joint hearing on the petitions be held, at which, if the Commission desires, argument as to the filing of said petitions may be made, and replies to these petitions having been filed; and,

It appearing, That the hearings in both proceedings have been closed and a report proposed by an examiner, recommending a plan of reorganization for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, has been issued and served upon the parties of record; and

It further appearing, That the plan now tendered is incomplete, the petitioners suggesting, among other things, that studies be made under the jurisdiction of this Commission, for the purpose of more thoroughly exploring the question of operating economies which would result from the proposed consolidation; and

It further appearing, That a reopening of the hearings and the making of a complete record and plan on the basis of the aforesaid petitions might postpone indefinitely a consummation of the reorganizations pending and should not be undertaken without further information in the premises, including the views of all interested parties;

It is ordered, That the above-entitled proceedings be, and they are hereby, reopened, and assigned for oral argument before this Commission, division 4, at its offices in Washington, D. C., at 10 a. m., December 15, 1938, upon the aforesaid petitions for permission to file a plan of reorganization involving a consolidation of the debtors' systems, and on the question of justification for the further hearings and the suggested investigations incident to such a proposal.

By the Commission, division 4.

W. P. Bartel,

(Seal) *Secretary.*

4520 BEFORE THE INTERSTATE COMMERCE COMMISSION.

In the Matter of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Reorganization.	Finance Docket No. 10882.

PETITION FOR LEAVE TO INTERVENE.

Come now your petitioners, E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, and respectfully represent that they have an interest in the matters in controversy in the above entitled proceeding and desire to intervene in and become a party to said proceeding and for grounds of the proposed intervention say:

I. Your petitioners, as a Protective Committee (hereinafter referred to as the "Committee") for holders of the Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975 (hereinafter referred to as the "Bonds"), of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter referred to as the "Debtor") were, by an order of the Interstate Commerce Commission, Division 4, dated May 24, 1938, authorized, pursuant to Section 77 (p) of the Act entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", approved July 1, 1898, as amended,

4521 to solicit authorizations to represent holders of such Bonds and to use, employ or act under or pursuant to such authorizations as the representative of such holders as may authorize the Committee so to act, in, or in matters relating to, and during the pendency of, proceeding No. 60463 now pending in the United States District Court for the Northern District of Illinois, Eastern Division, for the reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company; and to borrow money in any sum or sums not exceeding in the aggregate Fifty Thousand Dollars ($50,000) for the purpose of paying the actual and reasonable expenses of the Committee, but excluding any compensation to its members; all subject to certain conditions set forth in said order.

II. Despite the authorization contained in the Commission's order of May 24, 1938, referred to in the preceding

paragraph, your petitioners have not solicited powers of attorney from any holders of the Bonds, on the ground that the status of the reorganization proceedings of the Debtor has been such that the expense of a general solicitation of holders of the Bonds has not yet been justified and that the Committee would be derelict in its obligations to the holders of the Bonds if it subjected them to the substantial cost of a general solicitation, unless the provision made for the Bonds in the plan of reorganization finally recommended by the Commission to the court is in the opinion of the Committee inadequate or unless some other event occurs which, in the opinion of the Committee, justifies such a general solicitation.

4522 III. For the reasons set forth in the preceding paragraph, the Committee does not at the present time represent any of the holders of the Bonds (except such bonds as the individual members of the Committee may own, or in which they may have an interest, as set forth in the Committee's application to the Commission, dated March 14, 1938) but it has the informal assurance of Mr. William Church Osborn and certain other large holders of the Bonds that powers of attorney to represent such holders would be forthcoming at any time the Committee requests.

IV. Although the Committee does not represent any of the holders of the Bonds at the present time (except as referred to in paragraph III), nevertheless the situation of the Committee is unique and it is clear that the Committee has the support of holders of the Bonds. Your petitioners were appointed as a protective committee for holders of the Bonds by a nominating committee (consisting of Arnold Bernard, E. Stanley Glines, William V. Hodges, William Church Osborn, R. Harland Shaw and Russell Wiggins) which was nominated at a general meeting of the holders of the Bonds. This meeting was called by Guaranty Trust Company of New York, Corporate Trustee under the Mortgage and Deed of Trust securing the Bonds; and was held in the ballroom of the Hotel Commodore, New York, N. Y., at 10:30 A. M. on February 28, 1938. Your petitioners are informed and believe that notice of this meeting was sent by the Corporate Trustee to approximately fifteen thousand people who owned or represented one or more of the Bonds and that there were

4523 present at this meeting approximately seventy-seven persons representing holders of more than Eight mil-

lion six hundred thousand dollars ($8,600,000) principal amount of the Bonds.

V. The plan of reorganization of the Debtor proposed by M. S. Jamieson, Examiner, in the above mentioned proceedings, substantially affects the holders of the Bonds.

Wherefore, said E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Committee, pray leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at New York, N. Y., November 28, 1938.

E. Stanley Glines,
Morton H. Fry,
W. Rodman Peabody,
R. Harland Shaw and
C. Oliver Wellington,
Protective Committee for Holders of Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975, of Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
By E. Stanley Glines,
Chairman.

C. Frank Reavis,
Joseph H. Moran II,
Attorneys for Petitioners,
Office & P. O. Address,
20 Pine Street,
New York, N. Y.

4524 State of New York, County of New York, } ss.:

E. Stanley Glines, being duly sworn, deposes and says:

That he is the Chairman of the Protective Committee for Holders of Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975, of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the petitioners herein; that he has read the foregoing petition and knows the contents thereof; that the same are true as stated, except as to matters and things, if any, stated on

information and belief, and as to those matters and things he believes them to be true.

E. Stanley Glines.

Subscribed in my presence and sworn to before me by the affiant above named this 28th day of November, 1938.

Betty Stanss.
Notary Public, Kings County
Kings Co. Clk's No. 1292 Reg. No. 9650
N. Y. Co. Clk's No. 1757 Reg. No. 9S1108
Commission expires March 30, 1939

4525

Hodges, Reavis, Pantaleoni & Downey
20 Pine Street
New York, N. Y.

William V. Hodges
C. Frank Reavis
Guido Pantaleoni
Francis X. Downey
Martin D. Jacobs

Cable Address
Reavcable

November 25, 1938.

Messrs. O. W. Dynes,
888 Union Station Building, Chicago, Illinois;
Robert T. Swaine,
Cravath, deGersdorff, Swaine & Wood,
15 Broad Street, New York City;
James B. Alley and Russell L. Snodgrass,
1825 B Street, N. W., Washington, D. C.;
Thomas S. McPheeters, Jr.,
314 N. Broadway, St. Louis, Missouri;
Edward E. Watts, Jr.,
20 Exchange Place, New York City;
D. Willard, Jr.,
805 Transportation Building, Washington, D. C.;
Robert M. Becket,
Messrs. Wright, Gordon, Zachary & Parlin,
63 Wall Street, New York City;
Thomas O'G. Fitzgibbon,
15 Broad Street, New York City;
Kenneth F. Burgess,
11 South LaSalle Street, Chicago, Illinois;
Edwin S. S. Sunderland,
Davis, Polk, Wardwell, Gardiner & Reed,
15 Broad Street, New York City;

Henry T. Hunt,
Interior Department Building, Washington, D. C.;
4526 Thomas F. Murphy,
41 Broad Street, New York City;
George L. Shearer,
Stewart & Shearer,
45 Wall Street, New York City;
Harry Hoffman, Theodore E. Rein and
Milton E. Mermelstein,
30 Pine Street, New York City;
Meyer Abrams,
134 North LaSalle Street, Chicago, Illinois;
Julius Weiss,
551 Fifth Avenue, New York City;
J. T. Haslam and Joe D. Hughes,
United States Treasury, Washington, D. C.;
C. Francis Murphy,
Department of Justice, Washington, D. C.;
Jack E. Bagon,
475 Fifth Avenue, New York City;
Donald MacMillan,
Munsey Building, Washington, D. C.;
Mrs. Alice Cunningham Lacey,
73 Elm Street, Jamaica Plain, Massachusetts;
Messrs. Carmody, Roth & Mayer,
67 Broad Street, New York City;
John B. Marsh,
20 Exchange Place, New York City;
Poppenhusen, Johnston, Thompson & Raymond,
11 South LaSalle Street, Chicago, Illinois;
Sanford H. E. Freund and John A. Hill,
55 Wall Street, New York City;
M'Cready Sykes,
45 Wall Street, New York City;
Malcolm Mecartney,
1 North LaSalle Street, Chicago, Illinois;
Samuel W. McIntosh,
National Press Building, Washington, D. C.;
4527 Mr. C. M. Clay,
Counsel, Reconstruction Finance Corporation,
Washington, D. C.;
Chicago, Milwaukee, St. Paul & Pacific R. R. Co.,
Union Station, Chicago, Illinois;

Mr. James L. Homire,
Federal Emergency Administration of Public Works, Interior Building, Washington, D. C.;
Mr. David M. Neuberger,
154 Nassau Street, New York City;
Mr. Thomas E. Noonan,
33 North LaSalle Street, Chicago, Illinois;
Mr. Fred N. Oliver,
110 East 42nd Street, New York, N. Y.;
Mr. Lewis A. Stebbins,
33 North LaSalle Street, Chicago, Illinois;
Mr. Frank W. Walker,
Northwestern Mutual Life Insurance Company, Milwaukee, Wisconsin.

4528 BEFORE THE INTERSTATE COMMERCE COMMISSION.

(Caption—10882)

This is to certify that on behalf of the petitioners E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee for Holders of Fifty Year, 5% Mortgage Gold Bonds, Series A, due February 1, 1975 of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, we have this day served the annexed document, constituting the Petition of said Committee for leave to intervene in the above entitled proceeding, upon all parties of record in the proceeding by mailing a copy thereof, properly addressed to each party.

Dated at New York, N. Y., this 28th day of November, 1938.

(Signed) C. Frank Reavis,
(Signed) Joseph H. Horan, II,
Attorneys for Petitioners.

Sworn to before me this 28th day of November, 1938.

(Signed) Betty Stanss,
(Seal) *Notary Public.*

Notary Public, Kings County
Kings Co. Clk's No. 1292 Reg. No. 9650
N. Y. Co. Clk's No. 1757 Reg. No. 981108
Commission Expires March 30, 1939

4529 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 6th day of December, A. D. 1938.

* * * (Caption—10882) * * *

Upon consideration of the record in the above-entitled proceeding and the petition filed November 29, 1938, by E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw, and C. Oliver Wellington, constituting a protective committee for the debtor's 5-percent 50-year mortgage gold bonds, for leave to intervene herein; and

It appearing, That, by order of the Commission, division 4, dated May 24, 1938, these petitioners were conditionally authorized to serve as such committee, pursuant to section 77(p) of the Bankruptcy Act, as amended:

It is ordered, That the said E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, C. Harland Shaw, and C. Oliver Wellington, as a protective committee, be, and they are hereby, permitted to intervene and participate in the proceedings from this date, file exceptions to proposed reports, present arguments upon the record now made, and be treated as parties hereto; and

It is further ordered, That a copy of the intervening petition and of this order be served upon each of the parties to this proceeding.

By the Commission, division 4.

W. P. Bartel,
Secretary.

(Seal)

3839 Interstate Commerce Commission.

Finance Docket No. 10881.

Chicago & North Western Railway Company
Reorganization.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company.
Reorganization.

Submitted December 15, 1938. Decided January 19, 1939.

Petitions to reopen the record of the hearings in proceedings for the reorganization of the Chicago & North Western Railway Company, and the record of the hearings in proceedings for the reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, for the purpose of filing a plan of reorganization and consolidation of the two railway systems, denied.
E. B. Johnston for petitioners.

Samuel H. Cady, Nye F. Morehouse, Lowell Hastings, Kenneth F. Burgess, Douglas F. Smith, Fred N. Oliver, Thomas FitzGibbon, Guido Pantaleoni, Robert T. Swaine, Sanford H. E. Freund, J. G. Luhrsen, Leslie B. Soper, Alfred H. Phillips and John Marsh for other parties to the proceedings.

REPORT OF THE COMMISSION.

Division 4, Commissioners Meyer, Porter and Mahaffie.

By Division 4:

The Chicago and North Western Railway Company, hereinafter referred to as the North Western, on June 28, 1935, and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the Milwaukee, on June 29, 1935, filed a petition with the District Court of the United States for the Northern District of Illinois, Eastern Division, each stating that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization under section 77 of the Act of July 1, 1898, entitled "An Act to Establish a Uniform

System of Bankruptcy Throughout the United States," as amended. On the dates filed, the court approved the petitions as properly filed; and proceedings for the reorganization of the two debtors, each separately heard, have been in progress since that time before the court and this Commission. Plans of reorganization were filed in the proceedings by the debtors and by creditor groups; and the records of the hearings thereon before the Commission have been closed in both proceedings; in the case of the Milwaukee on March 22, 1938, and in the case of the North Western on April 22, 1938.

On October 26, 1938, a protective committee for holders of common stock of the North Western filed in the proceedings for its reorganization a petition to reopen the case for consideration of a new plan which would provide for consolidation of the North Western and the Milwaukee in connection with their reorganization. At the same time a similar petition, having reference to the same plan, was filed in the Milwaukee proceedings by a protective committee for holders of its preferred stock. The proposed consolidation would require modification of our orders entered in Consolidation of Railroads, 159 I. C. C. 522, etc. Answers asking denial of the petitions were filed in both proceedings by group committees representing life insurance companies and mutual savings banks. The petitioners ask consideration of such a plan in order to avoid threatened elimination of the present stockholders. By our order dated November 21, 1938, the petitions and answers were set down for oral argument before us on December 15, 1938; and on that date the Milwaukee committee, the two debtors, the four group committees, and interveners in both cases were heard.

Proponents of the further proceedings requested in the petitions include the two debtors and the two stockholders' committees. Views opposed to reopening were expressed by the four group committees, the trustee of the 3840 Des Plaines Valley bonds of the North Western system, the trustee of the Milwaukee 50-year 5-percent bonds, a protective committee for holders of bonds of the latter issue, a small group of such holders, the trustee of the Milwaukee adjustment mortgage, the trustee of the two Milwaukee & Northern mortgages of the Milwaukee system and the first and refunding mortgage of the North Western, by the trustee of the Sioux City & Pacific mortgage of the North Western system, and the trustee of

the St. Louis Peoria & North Western mortgage of the North Western system. The Railway Labor Executives' Association urged that if the petitions should be granted, and consolidation approved, provision be made in the plan for tempering its effects on labor. No creditor interest in favor of reopening either proceeding appeared.

Proponents of reopening, after making preliminary studies, estimate that the operating economies that could be effected by consolidation, through abandonment of unnecessary parallel lines and elimination of unnecessary duplication of facilities and services, would reach a total in excess of $10,000,000 a year; and that this could be accomplished without adverse effect on labor, without impairment of competition to the detriment of the interests of the public, and without disturbance of trade routes. The greater number of lines of the combined system would permit the opening up of new and superior routes between important points, on shorter mileage and better grades. Other economies too are mentioned, such as reduction of switching movements and transfer trains, declassing of lines, savings in maintenance of equipment through use of the superior Milwaukee facilities for repairing North Western equipment, consolidation of outside agencies, the calling in of men who are soliciting traffic that must go to one road or the other, and elimination of cross movements in the supply of coal. Revenues could also be increased wherever either system controls traffic and routes it to a competitor of the other; but might be reduced to a greater extent at other points. It is urged that if the savings can be effected, stockholders should not be denied participation therein. It is further urged that now when the two properties are in trusteeship is a particularly favorable time for consolidation, because of the effective method section 77 offers for dealing with obstructive minorities.

The plan of reorganization offered by the petitioners is incomplete in that it goes no further into questions regarding distribution of the new securities in reorganization than to specify the treatment of the Reconstruction Finance Corporation and to provide that the North Western stockholders shall receive 20 percent of the new common stock; and the stockholders of the Milwaukee a like 20 percent. The petitioners believe that within a period of 90 days they could present evidence which would conclusively show such substantial savings as to justify con-

solidation, and the consideration of a plan of consolidation. They would present a definite plan of reorganization and consolidation with this evidence. The North Western believes the necessary study, not a complete study, would take six to eight months and cost $150,000 to $200,000. The carrying into effect of some of the economies to be obtained by consolidation would, the petitioners believe, take three or four years.

Failure of the petitioners to offer their plan during the hearing, or to be ready with it now, is said to be due to the fact that the stockholders were slow to organize, that the means at the disposal of the committees were small, and that the studies made were for a time devoted to the subject of coordination rather than consolidation.
3841 The managements of the two companies have, however, not been lacking in means to present and defend their plans of reorganization; and each has done so, not until now suggesting this consolidation. In opposing reopening of the proceedings, the creditor interests do not oppose consolidations to eliminate waste as a general matter, although several of them have pointed out with great vigor the immense difficulties that lie in the way of the particular consolidation here proposed; and all are opposed on the ground of great and undue delay to reorganization.

The plan which the petitioners would file is based on expected normal earnings of the two properties, taking into account $10,000,000 of savings from consolidation, amounting to $40,000,000 a year. This sum capitalized at 4 percent amounts to $1,000,000,000. The total of creditor claims preceding the stock, as shown by the plan, is $1,038,607,952. The new capitalization proposed to be awarded creditors is $1,071,000,000, computing no-par common stock at $100 a share. It is evident that on the petitioner's assumptions, the interest of the holders of outstanding stock, if any, would be very small even if the two companies should be successful in consolidating.

The preparation and presentation of the plans for the separate reorganization of the two systems now before us took from June, 1935, to March and April, 1938. The difficulties of preparing a plan for a consolidated reorganization would be multiplied, as would also the questions of law and fact sure to arise. The number of persons, interests and communities that would be affected by consolidation makes it certain that it could be approved, if at

all, only after very extended hearings. Where so many communities are affected, years would be taken to abandon lines and settle the other questions that are necessarily involved. Meanwhile, interest required to service existing debt is running nearly $49,000,000 a year, largely unpaid, and still further preventing the stockholders from having any interest in the property.

The bonds proposed in the plan presented for filing would be dated July 1, 1938, which would seem to mean that the interests of holders of outstanding securities are to be determined as though consolidation had been made effective on that date. The plan states, however, that it is believed that it would require a minimum of five years and probably longer to realize the full benefits of the savings which consolidation would make possible. This 5-year period would not, presumably, begin to run until the petitioners had presented their definitive plan, this Commission had completed its investigation as to the desirability of consolidation and the form of reorganization to be approved, and the security holders had accepted and consummated the approved plan.

It is our duty under section 77, which we have always recognized, to expedite reorganization so far as within our power. In this connection, the concluding paragraph of Continental Bank v. Rock Island Ry., 294 U. S. 648, 685, outlines our duties as follows:

"The delay and expense incident to railroad receiverships and foreclosure sales constituted, probably, the chief reason which induced the passage of § 77; and to permit the perpetuation of either of these evils under this new legislation would be subversive of the spirit in which it was conceived and adopted. Not only are those who institute the proceeding and those who carry it forward bound to exercise the highest degree of diligence, but it is the duty of the court and of the Interstate Commerce Commission to see that they do. Proceedings of this character, involving public and private interests of such magnitude, should so far as practicable, be given the right of way both by the court and by the commission, to the end that they may be speedily determined."

3842 In our view the further proceedings requested would too long delay this determination and the enforcement of the rights of creditors.

The petitions for reopening are denied.

An appropriate order will be entered.

ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 19th day of January, A. D. 1939.

(Caption—10881, 10882)

Upon consideration of the matters and things involved in the petitions, for reopening the records of the hearings in these proceedings for the presentation of a consolidation plan of reorganization, filed on October 26, 1938, by a protective committee for holders of the common stock of the Chicago and North Western Railway Company and a protective committee for holders of the preferred stock the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission, division 4.

(S) W. P. Bartel,
Secretary.

(Seal)

4539 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 25th day of January, A. D. 1939.

Finance Docket No. 10882.

Chicago, Milwaukee, St. Paul & Pacific Railroad Company Reorganization.

Upon consideration of the record in the above-entitled proceeding and of the petition filed December 30, 1938, by Lemuel H. McHenry, S. A. Culbertson, W. C. Semple, A. J. Early, and the Guaranty Trust Company of New York, representing that they are bona fide holders of not less than $110,000, principal amount, of the first and re-

funding 5-percent bonds of the Chicago, Terre Haute and Southeastern Railway Company, and requesting permission to intervene herein specially and not generally for the sole purpose of objecting to the jurisdiction of this Commission and the District Court of the United States for the Northern District of Illinois, Eastern Division, to authorize any action looking toward a cancelation of the existing lease of the properties of said railway company to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, a merger or consolidation of the two properties, or any disturbance of the rights of the petitioners as holders of the bonds of said railway company, which company, the petitioners contend, is not subject to the jurisdiction of this Commission or the court and the petitioners further requesting permission to file a brief in this proceeding within 30 days after the date of an order permitting intervention, and further requesting leave to amend their petition by adding to their group other holders of the bonds of the said railway company or its subsidiaries upon a showing that no conflict exists between the rights of the holders of the several classes of bonds secured by mortgages on the properties of said railway company; and

It appearing, That a cancelation of the aforesaid lease and a merger or consolidation of the properties of the Chicago, Terre Haute and Southeastern Railway Company and those of the debtor were proposed in a plan of reorganization filed with this Commission, and were recommended in the report proposed by the examiner; and the record having been closed, briefs filed, and exceptions filed to the proposed report of the examiner;

It is ordered, That the said Lemuel H. McHenry, S. A. Culbertson, W. C. Semple, A. J. Early, and the Guaranty Trust Company of New York, be, and they are hereby, permitted to intervene specially and not generally in this proceeding for the purpose stated in the petition, to participate in the proceeding from this date, present oral argument on the record now made, and be treated as parties hereto; and

It is further ordered, That the petition for permission to file a brief within 30 days be, and it is hereby, denied, and

It is further ordered, That the petition for leave to amend the petition by including, upon a showing of lack of conflicting interests, the names of holders of other

bonds secured by mortgages upon the property of the railway company, be, and it is hereby, denied.

By the Commission, division 4.

W. P. Bartel,
Secretary.

(Seal)

3843 F. D. No. 10882 BG:JC

INTERSTATE COMMERCE COMMISSION.
Washington.

March 4, 1939.

(Caption—10882)

The above-entitled proceeding is assigned for oral argument on April 12, 1939, at ten o'clock a. m. (standard time), at the office of the Interstate Commerce Commission, Washington, D. C., before the Commission.

By the Commission.

W. P. Bartel,
Secretary.

4067 ORDER.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 23rd day of October, A. D. 1939.

(Caption—10882)

Upon consideration of the record in the above-entitled proceeding and the petition filed on October 2, 1939, by H. C. Orton, et al. constituting a protective committee for holders of the preferred stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, intervener, requesting that the proceeding be reopened for further hearing and the introduction of additional evidence pertaining to certain matters, particularly additional facts bearing upon the debtor's earning power, and

It appearing, That the petitioner has served copies of its petition upon all parties of record, and replies have been filed by two parties; and

It further appearing, That additional evidence of the nature described in the petition is not required for a determination of the matters involved in a plan of reorganiza-

tion to be approved by this Commission under the provisions of section 77 of the Bankruptcy Act, as amended;

It is ordered, That said petition be, and it is hereby, denied.

By the Commission, division 4.

W. P. Bartel,
Secretary.

(Seal)

4068 CERTIFICATE.

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C. on the 20th day of December, A. D. 1939.

(Caption—10882)

It appearing, That the Bureau of Accounts of the Commission, by direction of division 4, prepared a report dated June 13, 1936, on its investigation of the income accounts of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, for the calendar years 1930 to 1934, inclusive;

It further appearing, That the Bureau of Valuation of the Commission by direction of division 4, prepared a report on certain elements of value, and related matters, of the properties of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, and the Chicago, Terre Haute and Southeastern Railway Company, as of December 31, 1935, and later prepared four revised pages superseding four corresponding pages of its original report;

It further appearing, That, pursuant to the provisions of section 77(c)(11) of the Act of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended, the Commission, by division 4, on June 23, 1936, August 5, 1936, and November 14, 1936, ordered that the aforesaid reports and revisions thereof be filed in, and made a part of, the record in this proceeding; and

It further appearing, That, under the further provisions of section 77(c)(11) of the Act aforesaid, the actual cost of preparing said reports shall be certified by the Commission and shall be borne by the debtor's estate:

It is hereby certified, That in the preparation of the above-described report of the Bureau of Accounts, the Commission incurred costs for salaries, for per diem in

lieu of subsistence, for transportation, and for photostatic copies, in the aggregate amount of Thirteen Thousand Six Hundred Sixty-One Dollars and Thirty-Four Cents ($13,661.34); and

It is further certified, That in the preparation of the above-described report of the Bureau of Valuation, and revision thereof to the extent hereinabove mentioned, the Commission incurred costs for salaries and for mimeographic copies, in the aggregate amount of Three Thousand Two Hundred Sixty-One Dollars and Seventeen Cents ($3,261.17).

By the Commission, division 4.

W. P. Bartel,
(Seal) *Secretary.*

4150 ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 12th day of February, A. D. 1940.

(Caption—10882)

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and this Commission having, on the date hereof, made and filed a report containing its findings of fact, its conclusions thereon, and a full statement of the reasons for its conclusions, which report is hereby referred to and made a part hereof:

It is ordered, That the following plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, be, and it is hereby approved:

A. The effective date of the plan shall be January 1, 1939, provided, however, that the modification of the mortgages and the bonds of the Chicago, Terre Haute and Southeastern Railway Company, hereinafter referred to as the Terre Haute, and its subsidiaries, and the new lease of the Terre Haute property as hereinafter provided, shall be approximately as of the date of consummation of the plan.

B. The properties of the debtor shall be transferred to the reorganized debtor or to a new corporation organized for the purpose, in either case hereinafter referred to as the new company.

The "Report Summary" and "Report of the Commission," which should appear before the "Order approving the Plan of Reorganization," is found in Volume V of the

C. The capitalization of the new company at the consummation of the plan shall consist substantially of the equipment obligations outstanding, aggregating $33,322,999 on the basis described in the aforesaid report, and a bank loan of $1,184,000, both subject to final adjustment, $58,923,171 of first mortgage series A and new money bonds, $57,256,669 of general mortgage 4½ percent bonds, series A, $51,422,111 of general mortgage 4½ percent convertible bonds, series B, $108,675,971, par value, of 5 percent preferred stock, and 2,158,194 shares of common stock, of no par value. In addition, there shall remain outstanding, in modified form as hereinafter provided, $21,929,000, principal amount, of bonds of the Terre Haute and its subsidiaries.

D. Upon consummation of the plan and the issue and distribution of new securities as hereinafter provided, the existing stocks of the debtor, together with all its mortgage bonds, including bonds pledged, shall be surrendered to the reorganization committee and canceled and all existing mortgages shall be satisfied of record and canceled.

E. The new first mortgage shall constitute a first lien, subject only to the lien of equipment obligations, on all property owned by the debtor or its trustees in bankruptcy as such, including securities, equipment, and the equity in such equipment as may be subject to equipment-trust obligations, but excluding equipment or the equity in equipment which may be now or hereafter lodged under the lien of any of the Terre Haute mortgages in accordance
4151 with the terms of such mortgages, modified as herein provided. The first mortgage shall also have a lien on all similar property acquired by the new company after the reorganization, except equipment replacing deficiencies under the Terre Haute mortgages, and except that (a) if the new company shall acquire the properties of any other company (except a subsidiary) then constituting a class 1 carrier as defined by the rules of this Commission then in force, such properties shall not be subject to the lien of the first mortgage unless hereafter specifically subjected thereto or unless acquired in whole or in part by the use of first mortgage bonds or general mortgage income bonds, or moneys deposited under either of those mortgages, and (b) if the new company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a class 1 carrier as defined as aforesaid, properties then owned or

thereafter acquired by such other company shall not be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part by the use of first mortgage bonds or general mortgage income bonds or moneys deposited under either of said mortgages.

The new first mortgage bonds shall be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the State or States in which the new company is incorporated. First mortgage bonds, other than those issued in the reorganization, may be issued from time to time in different series, subject to limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates, and containing such provisions in respect to redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds, as may be prescribed by the board of directors of the new company at the time of issue, and approved by this Commission.

There shall be issued in connection with the settlement of the claims of creditors, as hereinafter described, approximately $53,923,171, principal amount, of series A first mortgage bonds, to be dated January 1, 1939, and mature January 1, 1989, bearing interest at the rate of 4 percent per annum, payable semiannually July 1 and January 1. Such bonds shall be redeemable, as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, both by publication, at par and accrued interest plus a premium of 5 percent if redeemed before January 1, 1940, and, if redeemed thereafter, at par and accrued interest plus a premium of 5 percent, decreased by ¼ of 1 percent for each 2 years elapsed after January 1, 1940, until January 1, 1979, and thereafter at par and accrued interest.

In adidtion to the foregoing bonds to be issued for the settlement of the claims of creditors, there shall be
4152 issued in the reorganization for the purpose of sale to provide for reorganization expenses, working capital, and necessary additions and betterments, not exceeding $10,000,000, principal amount, of new first mortgage

bonds, or such lesser amount as, with the approval of the reorganization committee, may be determined to be necessary having such maturity not earlier than January 1, 1959, and such rate of interest, not exceeding 5 percent per annum, and such other provisions, and be sold at such price and upon such terms and conditions as may be determined by the reorganization committee and approved by this Commission. The amount of bonds to be sold in connection with the consummation of the plan, and the application of the proceeds of the sale of such bonds, shall be determined by the reorganization committee in its discretion.

First mortgage bonds, in addition to those issued in the reorganization, shall be issuable from time to time to refund outstanding first mortgage bonds or to refund obligations secured by prior liens on after acquired property or to provide for or to reimburse the new company for not exceeding 75 percent of expenditures made after December 31, 1938, (including expenditures for new equipment subject to the lien of the first mortgage as a first lien, but not including other expenditures for equipment or for additions and betterments to equipment), which, under the accounting rules of this Commission at the time in force are properly chargeable to capital account; provided, however, that

(a) Except when bonds are authenticated in respect of new mileage (or securities representative thereof), or in respect of new equipment, said 75 percent shall be applied to the net amount of capital expenditures made after December 31, 1938, after deducting (to such extent and on such basis as may be provided in the first mortgage) credits to capital account after that date;

(b) If any new first mortgage bonds shall be issued for the acquisition of new equipment, a sinking fund shall be provided sufficient to retire an equivalent amount of such bonds within a period of either 15 years or the estimated life of the equipment to be acquired (as established by a certificate of an engineer who shall be appointed by the board of directors of the new company and approved by the trustee under the first mortgage and who may be an officer or employe of the new company), whichever may be the shorter; and

(c) If any property is acquired subject to existing liens the amount of additional first mortgage bonds issuable therefor, together with the aggregate amount of existing

liens to which such property is subject, shall not exceed 75 percent of the net cost thereof, including as part of such cost such existing liens whether or not the indebtedness secured thereby is assumed by the new company;

4153 (d) When the total principal amount of first mortgage bonds outstanding plus all other funded debt bearing fixed interest shall exceed either (a) 35 percent of the total capitalization of the new company, determined as hereinafter provided, or (b) 55 percent of such total capitalization, less the principal amount of funded debt bearing contingent interest at the time outstanding, the new company will pay to the trustee under the first mortgage as a sinking fund a sum equal to 50 percent of the available net income of the next preceding calendar year that remains after providing for all general mortgage sinking funds and charges prior thereto, as hereinafter described in connection with the application of available net income, or after said provisions shall have ceased to be operative, 50 percent of net income as defined by the accounting rules or practice referred to. Such sinking fund shall be applied to the retirement of first mortgage bonds, by purchase in the open market or by call for tenders or otherwise at not exceeding the redemption price (or in the case of bonds not redeemable, the principal amount and accrued interest) or by payment of matured or maturing bonds or redemption of redeemable bonds; all bonds so acquired shall be cancelled and no bonds may be issued under the first mortgage to refund any such bonds. First mortgage bonds and general mortgage income bonds outstanding shall be deemed to include all bonds authenticated and delivered which shall not have been cancelled or assured of retirement through the deposit of cash. Funded debt shall be deemed to include an amount equal to the capitalized value, at 5 percent per annum, of fixed rents payable for leased roads, other than terminal or bridge properties, but shall not include (a) obligations (other than mortgage bonds or equipment trust obligations) maturing not more than two years after their date, or (b) obligations of longer maturity secured by pledge of bonds having a lien on property of the new company except to the extent, if any, by which the principal amount of such obligations exceeds the principal amount of such bonds so pledged. Bonds guaranteed by the new company as to interest or principal or both (other than bonds of a terminal or bridge company) shall be included

in funded debt, but, in case of a joint and several guaranty with other corporations, only to the extent of the new company's basic proportion of the principal liability. There shall be included in determining total capitalization only (a) obligations constituting funded debt, (b) stock having par value, at such par value, and (c) stock without par value, at $100 a share in case of the stock issuable 4154 under the plan, and, in case of other stock, at the capital value at which such stock is carried on the books of the new company, not exceeding, however (except to the extent that earned surplus shall have been duly capitalized), the net amount received by the new company on the issue thereof; and

(e) No additional first mortgage bonds shall be sold or pledged unless the board of directors of the new company, by resolution adopted by two thirds of the entire number of directors, shall have authorized such sale or pledge, and the terms thereof.

The new first mortgage shall contain a covenant substantially to the effect that, during each calendar year, commencing January 1, 1939, or on or before March 1 next following the end of such calendar year, there will be paid into a reserve and retirement fund (a) such amounts as may be charged against operating expenses by the new company in respect of such calendar year as this Commission may require for depreciation of equipment, or, if no specific depreciation shall have been required, then a reasonable amount therefor within the maximum permitted by this Commission and (b) such amounts as may be required to be paid into the reserve and retirement fund out of the additions and betterments fund, as hereinafter provided.

The reserve and retirement fund may be used only to provide for or reimburse the new company for expenditures for the following purposes:

(a) Payment of principal of equipment trust obligations and sinking funds on bonds issued against the purchase of equipment; and

if at any time the amount then in said fund estimated to be payable into said fund in respect of the remainder of the then current calendar year shall exceed the principal of such equipment trust obligations and sinking funds required to be provided for out of said fund in respect of the remainder of said calendar year, then, to the extent of such excess;

(b) Payment in cash on account of the cost of new equipment;

(c) Cost of replacement of vacancies in equipment trusts;

(d) Cost of replacement of property retired to the extent chargeable to capital account;

(e) Additions and betterments to equipment chargeable to capital account required to maintain the efficiency of the system unimpaired; and

if the amount of the above mentioned excess of said fund shall at any time be more than $5,000,000, then to the extent of such excess over $5,000,000;

(f) Any other capital expenditure for which first mortgage bonds might be issued.

Should an emergency exist resulting in insufficient earnings from which to meet interest or any sinking fund payments on the first mortgage bonds, or on any other secured obligation the lien of which is not junior to the lien of the first mortgage bonds, the board of directors may, in its discretion, apply any amounts in said fund to the extent
4153 necessary to make good the deficiencies, but thereafter no interest upon the general mortgage income bonds or dividends on stock shall be paid until the reserve and retirement fund has been reimbursed for the funds so used.

The reserve and retirement fund shall be segregated from the general funds of the new company and held in cash or invested in United States Government securities. If, after the final computation of the amount required to be paid into said fund in respect of any calendar year, and of the amount appropriated or to be appropriated therefrom in respect of expenditures made during such calendar year, the unappropriated balance of said fund, as of the end of said calendar year, shall exceed $5,000,000, such unappropriated balance in excess of $5,000,000 shall be applied to the retirement, through purchase or redemption, of any funded debt at the time outstanding secured by lien upon any property upon which the first mortgage is a lien.

To the extent that any expenditures are provided for or reimbursed out of the reserve and retirement fund, the new company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends, in priority to, or on a parity with, the preferred stock, to capitalize or reim-

burse such expenditures; provided, however, that, subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mortgage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75% of which first mortgage bonds or general mortgage income bonds may be issued.

The new first mortgage shall also contain a covenant to the effect that the principal amount of either first mortgage bonds or general mortgage income bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

F. The new general mortgage shall constitute a lien, subject to the lien of the first mortgage, upon all property from time to time subject to the lien of the first mortgage. Bonds issued under the general mortgage shall be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the state or states in which the new company is incorporated.

General mortgage income bonds may be issued from time to time in different series, subject to the limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates and containing such provisions in regard to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, sinking funds and priority as among the several series, of interest and sinking fund, as may be prescribed by the board of directors of the new company at the time of issue, and approved by this Commission.

There shall be issued in connection with the reorganization and for the purposes hereinafter stated approximately $57,256,669, principal amount, of series A general mortgage income bonds, to be dated January 1, 1939, and to ma-
4156 ture January 1, 2014, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent, (including interest for the income period next preceding), whether for consecutive or nonconsecutive periods, as hereinafter defined, but in priority to interest on the series B bonds, payable on the first day of April, commencing April 1, 1940.

There shall also be issued in connection with the reor-

ganization for the purposes hereinafter stated approximately $51,422,111, principal amount, of general mortgage, series-B convertible income bonds, to be dated January 1, 1939, and to mature January 1, 2039, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent, (including interest for the income period next preceding), whether for consecutive or nonconsecutive income periods as hereinabove defined, but in subordination to interest on the series A bonds, payable on the first day of April, commencing April 1, 1940.

Interest on general mortgage income bonds shall be paid, together with any accumulations thereof, only out of available net income of the new company as hereinafter provided, with such priority as among the several series as may be determined by the board of directors of the new company at the time of the creation of such series, provided, however, that the interest on any new series shall not have priority over Series A or Series B. Accumulations of interest shall not bear interest. Upon the happening of any event or default provided in the mortgage, and institution with the approval of any court or public regulatory body having jurisdiction in the premises of a proceeding seeking reorganization of the new company, or the appointment of a trustee or receiver for all or any substantial part of its property, all arrears of accumulated interest shall become immediately due and payable.

No interest shall be paid on the general mortgage income bonds if the amount so paid would be less than ¼ of 1 percent, and all payments shall be in multiples of ¼ of 1 percent. Any such excess available for interest not paid because of the foregoing provisions shall be reserved and added to the amount available for such interest in the succeeding income period for the payment of such interest.

The series B convertible income bonds shall be convertible into the common stock of the new company at the option of the holders at any time (but, in the case of said bonds called for redemption, only up to and including the day which shall be 30 days prior to the redemption date, or, if such day shall be a holiday the first business day thereafter) at the rate, for each $1,000 bond, of 10 shares of common stock, with appropriate provisions for adjustment of interest and dividends and in the event of stock dividends or split-ups or in the event of accumulation of shares,

The series A and series B income bonds shall be redeemable for the sinking fund at any time on 60 days' notice at the face value thereof, plus accrued and unpaid accumulations of interest; and otherwise as a whole or
4157 in part on any interest payment date on 60 days' notice and at any other time on 90 days' notice at 101 percent of the face value thereof if redeemed on or before January 1, 2014, and thereafter at face value plus accrued and unpaid accumulations of interest to the extent accumulations are authorized.

The general mortgage income bonds of series A and series B shall be entitled to the benefit of a sinking fund to be created by the annual payment to the mortgage trustee on April 1 of each year, out of available net income as hereinafter defined, of an amount equal to ½ of 1 percent of the aggregate principal amount of general mortgage income bonds, series A and series B, authenticated and delivered. The sinking fund shall be applied from time to time to the purchase, at not exceeding their principal amount, or, if not obtainable, to the redemption, of general mortgage income bonds, series A, so long as any of the bonds of said series shall be outstanding, and thereafter of general mortgage income bonds, series B, and all bonds so purchased and redeemed shall be canceled. Sinking funds may be provided for general mortgage income bonds of any other series as may be determined by the board of directors of the new company, with such priority as between such series as the board may decide, provided none of such series shall have priority over series A or series B.

General mortgage income bonds, in addition to those issued in the reorganization may be issued from time to time in lieu of first mortgage bonds, for the purposes and subject to the restrictions stated for the issue of additional first mortgage bonds. The general mortgage shall contain a covenant substantially to the effect that no general mortgage income bonds (other than those to be issued under the plan) shall be sold or pledged (except to refund outstanding first mortgage bonds or income bonds or underlying obligations) unless the board of directors of the new company, by resolutions adopted by two-thirds of the entire number of directors, shall have authorized such sale or pledge.

The general mortgage shall contain covenants similar to those in the first mortgage in respect of the reserve and retirement fund.

The general mortgage shall also contain a covenant to the effect that the principal amount of either first mortgage bonds or general mortgage bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

G. The mortgage indentures securing the first mortgage bonds of the Southern Indiana Railway Company, the first mortgage bonds of the Bedford Belt Railway Company, the first and refunding mortgage bonds of the Terre Haute, and the income mortgage bonds of the Terre Haute shall be modified by supplemental indentures and the existing bonds correspondingly modified, without disturb-
4158 ing their liens, or new bonds issued in exchange for the existing bonds, in either case effective approximately as of the date of consummation of the plan, so that (1) the maturity of all such bonds shall be the date of maturity of the first mortgage series-A bonds of the new company, (2) all such bonds shall bear fixed interest at the rate of 2.75 percent per annum and contingent interest in addition at the rate of 1.5 percent per annum, the payment of the latter being contingent upon the earnings of the new company to the same extent, in the same manner, and with the same limitations, as is provided for the payment of interest on the general mortgage series-A income bonds of the new company, as hereinafter described, (3) the holders of the aforesaid bonds shall waive all equipment vacancies under the existing mortgages up to the effective date of the plan, January 1, 1939, (4) the new company may, in the replacement of equipment retired after the effective date of the plan, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 percent of the total cost of the equipment, and (5) the mortgages contain appropriate provisions permitting, subject to the approval of this Commission, abandonment of Terre Haute property which the board of directors may deem it to the interests of the system to abandon. The supplemental indenture for the Terre Haute income mortgage shall declare null and void the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the income bonds. A new lease shall be made between the Terre Haute and the new company which shall replace the present lease between the Terre Haute and the debtor. The new lease shall provide for the assumption by the new company of the payment of the principal amounts of the mortgage bonds, modified as

above provided, and for the payment by the new company of the interest on the modified bonds at the rates and under the conditions specified in the modified bonds, in addition to an amount, not exceeding $12,000 a year, to pay the taxes and corporate expenses of the Terre Haute. The lease shall permit, subject to the approval of this Commission, the abandonment of property which the board of directors may deem to the advantage of the system to abandon, and shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company.

The foregoing provisions of the plan, if accepted by substantially all the Terre Haute bondholders, shall become effective approximately as of the consummation of the plan. The reorganization committee (hereinafter provided for), upon confirmation of the plan by the court, shall submit the foregoing provisions, with copies of this report and order, to all the Terre Haute bondholders, and shall report to the court the result of such submission. Should the court determine that the foregoing provisions relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all the Terre Haute bondholders, then the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of the principal and interest 4159 of the Terre Haute income mortgage bonds, shall be rejected, in so far as the plan herein approved is concerned, as of the date of such determination by the court, without prejudice to either the negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to the approval of this Commission. In the event the court determines that the described provisions have not been so accepted, appropriate adjustment shall be made by the court in the corporate structure of the new company, approved herein, by elimination of the assumption of obligation with respect to the Terre Haute bonds; and such other adjustments as the court may deem necessary to put the plan into effect.

H. The available net income shall be determined for each calendar year (herein called income period), commencing January 1, 1939 as promptly as possible after the termination thereof, by deducting from the consolidated income of the new company and its railroad subsidiaries

available for fixed charges for such income period (determined in accordance with the accounting rules of this Commission or those of any other public regulatory body having jurisdiction in the premises at the time in force, or to the extent not covered by such accounting rules, in accordance with sound accounting practice):

(a) All fixed charges accrued during such income period; and

(b) All other charges properly deductible from such income in determining income after fixed charges under such accounting rules then in force, but excluding contingent interest* and additions and betterments fund and sinking fund requirements hereinafter provided for;

Provided, however, that if the new company shall not come into ownership and possession of the properties now operated by the bankruptcy trustees of the debtor on or before the effective date of the plan, the available net income for any period after the effective date of the plan, until the new company comes into possession and operation of such properties, shall be computed as if the new company had come into such ownership or possession on said date, and had issued, as of that date, the new securities issuable under the plan, except that the present Terre Haute bonds shall be considered as undisturbed until the date of issue of the modified or new bonds issued under the supplemental indentures.

The available net income for each income period shall be applied to the following purposes and in the following order:

(1) The available net income shall first be applied, on April 1 of each year, beginning 1940, to the creation of a fund to provide for, or to reimburse the treasury of the new company for, all the cost, payable in cash, of additions and betterments to the mortgaged property, including equipment, which are properly chargeable to capital account under the accounting rules of this Commission then in force, provided, however, that

4160 (a) To the extent that expenditures are so provided for or reimbursed out of the additions and betterments fund, the new company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends,

* Contingent interest on the modified Terre Haute bonds shal also be excluded for the purpose of this determination although such interest shall be shown in the accounts as rent for leased roads.

in priority to, or on a parity with, the new preferred stock, to capitalize or reimburse such expenditures; provided, however, that, subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mortgage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage income bonds may be issued:

(b) The amount set aside in the additions and betterments fund out of available net income of any income period (A) shall not be less than $2,500,000 or such portion of that sum as may be available, plus the amount, if any, by which the amount applied to the fund out of available net income in the last preceding income period was less than $2,500,000 (such deficiency payments not to apply to any prior income period except the one immediately preceding), (B) plus such additional amount as the board of directors shall determine to set aside for the fund out of available net income for the income period, provided that the total amount so set aside for the income period shall not exceed $5,000,000, or 4 percent of railway operating revenues, whichever amount is greater, less any amount applied out of the reserve and retirement fund for the income period for capital expenditures other than payments of equipment obligations and payments on account of new equipment.

If the new company shall establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for its roadway and structures, then the additions and betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor.

(c) The additions and betterments fund shall be segregated from the general funds of the new company and held in cash or invested in United States Government securities; and

(d) If, after final determination of the amount to be paid into said fund in respect of any calendar year, and of the amount appropriated or to be appropriated therefrom in respect of expenditures made during such calendar year, the unappropriated balance of said fund, as of the

end of said calendar year, shall exceed $5,000,000, such unappropriated balance in excess of $5,000,000 shall be paid into the reserve and retirement fund hereinbefore provided for, provided, however, that the unappropriated balance not in excess of $5,000,000 shall be carried over to the succeeding year and be used in that or succeeding years to the extent required for the described purposes for which the fund is created.

(2) Any then remaining available net income shall 4161 be applied to the extent, if any, by which the new company shall have failed to earn its fixed charges in the last preceding income period, to reimburse the treasury of the new company for any amount expended in paying fixed charges for such income period in excess of net income available for interest for such income period.

(3) Any then remaining available net income shall be applied to the sinking funds elsewhere provided in the plan for the retirement of first-mortgage or general-mortgage bonds, if any, issued for the acquisition of equipment free of other liens.

(4) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new company's general mortgage income bonds and any accumulation thereof, with such priority as between the several series of general mortgage income bonds as may be provided in such bonds, subject to the provisions as to priority herein stated. If interest is payable for any income period on general mortgage income bonds of series bearing interest at different rates (including accumulations), but without priority as to payment as between each other, and the available net income applicable thereto shall be insufficient to pay all unpaid interest for such income period (including accumulations), the amount applicable shall be apportioned among the several series in proportion to the unpaid interest for such income period (excluding accumulations) on the bonds of the several series, respectively. Payments of contingent interest on the four issues of new Terre Haute bonds, up to the limiting rate of 1.5 per cent per annum fixed in the supplemental indentures, shall be in multiples of ¼ of 1 percent, and shall rank with the debtor's new general mortgage series A bonds, and ahead of the series B bonds, in priority of interest payment. In periods when the available net income is not sufficient to enable the new

company to pay the full rate of 4½ percent on the series A bonds, the ratio of the rate actually paid to the rate of 4½ percent shall be applied to the 1.5 percent rate on the new Terre Haute bonds in determining the amount of contingent interest payment on the latter bonds, so that the Terre Haute bondholders of each class shall receive the same proportion of the contingent interest payment due on their bonds as will the new company's creditors who receive general mortgage series A bonds.

(5) Any then remaining net available income shall be applied to the payment of the sinking funds provided for the several series of the general mortgage income bonds at the time outstanding; with such priority, as between the sinking funds provided for the several series, and otherwise at the times and upon such terms, as may be provided in such bonds;

(6) Any then remaining available net income shall be applied to payment to the sinking fund to be created and paid to the trustee under the first mortgage in the event the principal amount of first-mortgage bonds outstanding, plus all other funded debt bearing fixed interest, shall exceed either (a) 35 percent of the total capitalization of the new company, determined as elsewhere provided in the plan, or (b) 55 percent of such total capitalization, less the principal amount of funded debt bearing contingent interest at the time outstanding.

(7) Any then remaining available net income may be applied, as the board of directors of the new company may determine, to dividends on the several classes of stock in the order of their priority, or to general corporate purposes.

I. The new preferred stock shall be authorized in unlimited amount subject to the laws of the State or States in which the new company is incorporated. Approximately 1,086,760 shares of preferred stock, series A, having a par value of $100 each, shall be issued in the reorganization. Other series may be later issued under the limitations and restrictions specified in the certificate of incorporation of the new company, with dividends at such rates and to contain such provisions in regard to accumulation of dividends, voting power, priority or liquidation, redemption, conversion, value (par or no par), retirement funds, participation, etc., as may be prescribed by the board of directors of the new company at the time of

creation of the series, and approved by this Commission. So long as any shares of series A stock shall remain outstanding, the consent of the holders of at least two-thirds in number of shares of series A stock, then outstanding, given in writing or by resolutions adopted at a meeting, shall be necessary for effecting the issue of any additional shares of preferred stock ranking, either as to dividends or as to distribution upon liquidation, in priority to or on a parity with the preferred stock of series A.

The holders of series A preferred stock shall be entitled to receive, in respect of any income period, dividends at the rate of 5 percent per annum payable, but only as and when declared by the board of directors of the new company, out of the available net income of the new company as defined above. Such dividends shall be non-cumulative, whether or not earned, but no dividends shall be paid on the new common stock unless and until there shall have been paid, or declared and funds set apart for payment, on the series A preferred stock, dividends at the rate of 5 percent per annum in respect of the three consecutive income periods immediately preceding the date of payment on the common stock. After dividends shall have been paid or declared or funds set apart for payment on the common stock at the rate of $3.50 a share in respect of any one income period, each share of series A preferred stock will be entitled to participate equally with each share of common stock in any additional dividends paid or declared or set apart for payment to the extent of $1 a share in respect of such income period.

The series A preferred stock shall be redeemable, at the option of the new company, in whole or in part at any time on 30 days' notice by publication, at its par value, together with any unpaid dividends that shall have been declared thereon.

In the event of the dissolution, winding up, or liquidation of the new company, the holders of series A preferred stock shall be entitled to receive out of the assets of the new company, the par value of their shares with all dividends that shall have been declared thereon, before any distribution shall be made to the holders of the common stock, but shall not be entitled to share in any assets of the new company thereafter remaining.

The holders of preferred stock, series A, shall be entitled to voting power on all matters in respect of which stock-

holders of any class shall be entitled to vote, and
4163 shall further be entitled, voting separately as a class, to elect a majority of the board of directors of the new company until full 5-percent dividends shall have been paid upon the preferred stock, series A, for three consecutive calendar years. Thereafter, each share of preferred stock, series A, shall be entitled to vote equally with each share of common stock upon the election of directors, by cumulative voting, until such time as full dividends on the preferred stock, series A, shall not have been paid during three consecutive calendar years, in which event the holders of the preferred stock, series A, shall again become entitled to elect a majority of the board of directors and to retain this right until full dividends shall have again been paid for three consecutive calendar years, when equal voting rights for both classes of stock shall be resumed.

J. The new common stock shall be unlimited in authorized amount, subject to such limitations, if any, as may be provided in the charter or by the laws of the State or States in which the new company is incorporated. The new common stock shall be without par value. For the purposes of the reorganization approximately 2,103,194 shares shall be authorized and issued for allotment to secured creditors in the initial distribution, and not exceeding 55,000 additional shares shall be authorized and issued for distribution to the holders of general unsecured claims and the holders of the debtor's adjustment mortgage bonds, all as hereinafter provided. Approximately 514,221 additional shares shall be authorized and held in reserve for the conversion of the series B general mortgage bonds on the basis stated in the description of that mortgage. Additional common stock may be issued only with the approval of this Commission in further proceedings. Each share of new common stock shall be entitled to one vote.

K. The new securities may be issued in temporary form in the first instance or interim certificates may be issued therefor. Scrip may be issued and distributed in lieu of fractions of a share of stock or of bonds. Such scrip may be non-interest bearing or non-dividend bearing; but will be exchangeable for new securities (or interim certificates therefor) when presented in proper multiples on terms and conditions determined by the board of directors of the new company. Accrued interest upon the existing securities

has been calculated as of December 31, 1938, and in most cases results in odd amounts which would involve the delivery of scrip representing small fractions. Such adjustment of these interest amounts as may be necessary to avoid the issuance of scrip in too small fractions may be made by the reorganization committee or the reorganized company in its discretion.

4164 L. The treatment of claims and the provisions for cash financing under the plan shall be as follows:

(1) Each equipment-trust certificate of series A, C, D, E, F, G, H, J, K, and L, maturing between April 1, 1935, and December 31, 1940, and not fully paid shall remain undisturbed as to lien and interest but the principal thereof shall be paid at the rate of 20 percent of each instalment annually, in accordance with the arrangement followed by the bankruptcy trustees. Equipment-trust certificates of series M and series N, and trustees' equipment-trust certificates of series O, P, Q, R, S, and T, and any other equipment-trust certificates which may be issued by the bankruptcy trustees before the consummation of the plan, together with any other obligations under equipment leases or sales agreements, are not affected by the plan and shall be assumed or paid by the new company when they respectively become due. The interests of the holders of equipment obligations other than holders of series A, C, D, E, F, G, H, J, K, and L, shall be deemed not to be adversely and materially affected by the plan and submission of the plan to such holders shall not be necessary. The issue of additional equipment obligations prior or subsequent to the consummation of the plan, if duly authorized under section 20a of the Interstate Commerce Act, shall not be prohibited.

(2) There shall be applied in reduction of the debtor's notes to the Reconstruction Finance Corporation all the cash in the hands of the trustee of the first and refunding mortgage at the time of consummation of the plan. In payment of the balance then due, including unpaid interest, if any, the Reconstruction Finance Corporation shall receive the first mortgage, 4 percent series A bonds of the new company equal in principal amount of 100 percent of such balance. The securities pledged with the Reconstruction Finance Corporation shall be delivered to the reorganization committee.

(3) The terms and conditions of the four classes of

Terre Haute bonds shall be modified and a new lease of the Terre Haute properties shall be executed upon the agreement by substantially all the Terre Haute bondholders to accept the provisions of the plan affecting their interests, all in the manner and under the conditions described above under G.

(4) The holders of Milwaukee & Northern Railroad Company first mortgage 4½ percent bonds shall receive for each $1,000 bond and all unpaid interest thereon (the total amount of unpaid interest on bonds outstanding being considered to be $103,204, as of the effective date of the plan) approximately $734.12 of new first mortgage 4-percent bonds, series A, and $314.62 of new general mortgage 4½ percent bonds, series A.

(5) The holders of Milwaukee & Northern Railroad Company consolidated mortgage 4½-percent bonds shall receive for each $1,000 bond and all unpaid interest thereon (the total amount of unpaid interest on bonds outstanding being considered to be $247,260, as of the effective date of the plan) approximately $262.[illegible] of new first mort-
4165 gage 4 percent bonds, series A, [illegible]7.06 of new general mortgage 4½ per cent bonds, series A, $209.75 of new general mortgage 4½ percent bonds, series B, and $209.75 par value, of new 5 percent preferred stock.

(6) The holders of the several series of the debtor's general mortgage bonds, due 1989, shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, the following securities, respectively: Series A, approximately $279.30 of new first mortgage 4 percent series A bonds, $391.01 of new general mortgage 4½ percent series A bonds, $223.44 of new general mortgage 4½ percent series B bonds, and $223.44, par value, of new 5 percent preferred stock; Series B, approximately $275.70 of new first mortgage 4 percent series A bonds, $385.99 of new general mortgage 4½ percent series A bonds, $220.56 of new general mortgage 4½ percent series B bonds, and $220.56, par value, of new 5 percent preferred stock: series C, approximately $283.17 of new first mortgage 4 percent series A bonds, $396.44 of new general mortgage 4½ percent series A bonds, $226.54 new general mortgage 4½ percent series B bonds, and $226.54, par value, of new 5 percent preferred stock, series D, approximately $283.31 of new first mortgage 4 percent series A bonds, $396.92 of new general mortgage 4½ per-

cent series A bonds, $226.81 of new general mortgage 4½ percent series B bonds and $226.81, par value, of new 5 percent preferred stock; series E, approximately $285.62 of new first mortgage 4 percent series A bonds, $399.87 of new general mortgage 4½ percent series A bonds, $228.50 of new general mortgage 4½ percent series B bonds, and $228.50, par value, of new 5 percent preferred stock.

(7) The holders of the debtor's 50-year mortgage 5 per cent bonds shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately $179.38 of new general mortgage 4½ percent series B bonds, $717.50, par value, of new 5 percent preferred stock, and 2.99 shares of new no-par common stock.

(8) The holders of the debtor's convertible adjustment mortgage 5-percent bonds shall receive, for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately 9.78 shares of new no-par common stock, such allotment including provision for a share in the debtor's free assets.

(9) The holders of the first mortgage 5-percent bonds of the Chicago, Milwaukee & Gary Railway Company shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately 11.87 shares of new no-par common stock.

(10) The block of 55,000 shares of new common stock, herein provided for distribution in respect of claims upon the free or unpledged assets of the debtor, shall be distributed on the following bases:

(a) To the holders of the adjustment mortgage bonds, in recognition of the portion of their claim not satisfied from the proceeds of the mortgaged assets, there shall be assigned 39,163 shares of common stock, which is on the basis of approximately 0.7 share of stock to each $1,000 of claim.

(b) To all other unsecured claims, not entitled to 4166 priority over existing mortgages, there shall be assigned shares of common stock on the basis of 0.7 share for each $1,000 of claim allowed by the court; and

(c) In the event there shall then remain any substantial number of shares, out of the aforesaid block of 55,000 shares, such remaining shares shall be distributed pro rata among the holders of the adjustment mortgage bonds and the unsecured claims.

(11) The equity of the holders of the debtor's preferred

stock and common stock having been found to be of no value, such stockholders shall not be entitled to participate in the plan.

(12) Cash requirements in connection with the reorganization shall be for the purpose of providing necessary additions and betterments and working capital, and for payment of the expenses of reorganization. For such purpose there shall be issued in the reorganization not exceeding $10,000,000, principal amount of new first mortgage bonds, (or such lesser amount as, with the approval of the reorganization committee, may be determined to be necessary) having such maturity, not earlier than January 1, 1959, and such rate of interest, not exceeding 5 per cent per annum, and such other provisions, and to be sold at such price and upon such terms and conditions as may be determined by the reorganization committee and approved by this Commission.

(13) The new company shall pay in cash any interest coupons on the debtor's bonds which were declared payable but had not been paid prior to July 1, 1935, and any interest coupons payable subsequent to that date and prior to the date of consummation of the plan, under orders of the court, if and when such coupons are presented by the holders thereof.

(14) The amounts of the obligations herein shown as of the effective date of the plan are subject to change, such as by the payment of equipment obligations, repayment on loans, and payment of bond interest due prior to January 1, 1939. The reorganization committee shall be authorized, in order to give effect to such changes, to make such adjustments in the claims provided for in the plans, and such changes in allotment of securities, consistent with the provisions of the plan, as may be approved by the court.

M. All taxes levied, assessed or accrued against the debtor or the trustees of its property by the United States and remaining unpaid at the date of consummation of the plan, shall be paid in cash or assumed and paid by the reorganized company, without requiring proof thereof in this proceeding and without prejudice by reason of not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor, subject to the statutes of limitations normally applicable to the assessment and collection of such taxes, provided that the liability of the new company for any such taxes

which are the subject of litigation on the date of the consummation of the plan or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statute of limitations shall be determined pursuant to law, and provided further that this provision shall not be deemed to preclude either the debtor, the trustees of its property, or the new company from contesting the merits of any such tax in the manner provided by law.

The new company shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not
4167 terminate at or prior to the conclusion of the reorganization proceeding.

Claims against the debtor entitled to priority over their respective mortgages, claims for taxes levied, assessed, or accrued against the debtor or its trustees, current liabilities and obligations incurred by the trustees during the reorganization proceedings, to the extent unpaid at the date of consummation of the plan, and claims arising from the disaffirmance of executory leases or contracts by the trustees pursuant to orders of the court, in respect of which claims are filed or evidenced in accordance with orders of the court, shall be assumed by the new company and paid in the usual course of business with the same relative priority as they now have with respect to other obligations of the debtor. When so treated, we find that such claims against the debtor, and the interests of parties to executory contracts with the debtor assumed by the new company, other than the obligations of the debtor's trustees, are not adversely and materially affected by the plan.

N. The plan shall be carried out under the supervision of a reorganization committee consisting of five members, two to be designated by the institutional investors group committee and the Mutual Savings Bank Group, jointly, one by the protective committee representing the 50-year mort-

gage bonds, one by the Reconstruction Finance Corporation, and one by the trustee of the debtor's convertible adjustment mortgage. Should any of the parties named fail to designate its representative or representatives, as the case may be, within such time as the court shall consider reasonable, the court shall appoint such representative or representatives. The reorganization committee shall be authorized to fill vacancies created by death, resignation, or otherwise, preserving the membership of the several interests as before. The committee shall determine the method of carrying out the plan, subject to approval of the court, and the form; except as herein otherwise expressly provided, and the provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan. The reorganization committee shall not be authorized to solicit securities or authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation pursuant to section 77(p) of the Bankruptcy Act, as amended.

The board of directors of the new company shall consist of not less than seven nor more than fifteen members who may, if consistent with the laws of the State under which the corporation is created, be designated initially by the reorganization committee, each of its members being entitled to name his proportionate share of the members of the board, but when the number of board members exceeds an even multiple of the number of persons serving on the committee, then the additional member or members of the board may be elected by a majority vote of the committee as a whole. At a suitable date, within a reasonable time to be fixed by the reorganization committee following the consummation of the plan, the board of directors shall be elected by the stockholders in the manner herein
41 68 described in connection with the voting rights of the new stock.

The new company shall, by by-law or otherwise, create a finance committee of not less than three nor more than five members of its board of directors, which committee shall have supervision over all financial matters, including the annual budget of capital expenditures, and all other expenditures of the new company's funds, and the new company shall covenant to make only such expenditures as shall be approved by said finance committee and author-

ized by the board of directors, exclusive of emergency expenditures, and of capital items not exceeding $25,000 for any lien and not exceeding $200,000 in the aggregate in any year.

O. The plan shall be carried out either by vesting the properties of the debtor, together with the property held by the trustees, in the reorganized debtor corporation or in a new corporation created for the purpose of this reorganization, and by execution by the reorganized or new company of the new mortgages and the issue by it of the new securities contemplated under the plan. The reorganized or new company shall be deemed to have come into possession of the properties as of the effective date of the plan, January 1, 1939.

P. If so ordered by the court, the plan, after it shall be found fair and equitable and confirmed by the court, may be executed by the sale or sales, at not less than fair upset prices, to be fixed by the court, of all or any part of the property of the debtor, all on such conditions and in such manner as the court may direct. Upon any such sale or sales, the property and assets offered for sale may be purchased for the benefit of the new company by the reorganization committee, and in that event there shall be applied on account of the purchase price the distributive share of the proceeds of such sale of all securities, the holders of which shall have assented to the plan, and of the securities, though not assenting to the plan, of all classes which shall have accepted the plan. If the property of the debtor or a substantial portion thereof so offered for sale should be sold to others than the reorganization committee, the plan herein approved shall be deemed inoperative except insofar as provision is made therein for the sale of the properties as may be ordered by the court, except that if the properties of the Chicago, Milwaukee & Gary Railway Company should be sold to others than the reorganization committee, the plan shall be executed without the inclusion of that property in the reorganization, and the coverage of the mortgages and the issue of securities shall be adjusted accordingly as directed by the court. In the event of any such sale of substantially all of the properties to the reorganization committee, it may in its discretion sell all or any portion of the new securities distributable under the plan in respect of securities of any creditor, if neither such creditor nor the class to which

such creditor belongs shall have accepted the plan, 4169 provided that creditors in a class which shall not have accepted the plan and who themselves shall not have accepted the plan, shall have the right, if they shall so notify the committee within a period of 30 days after the confirmation of the sale, to assent to the plan and receive the securities allocated to them under the plan in lieu of their aliquot share of the proceeds of such sale. The proceeds of sale of securities may be used to pay the portion of the purchase price payable in cash on any such sale of the properties.

Q. The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively.

R. Acceptance of the plan shall include acceptance of the provisions of the new bonds, mortgages, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set forth in full herein.

S. The carrying out of the plan shall be as provided in the Bankruptcy Act.

It is further ordered, That the journal entries covering the necessary accounting adjustments under the plan herein approved shall be submitted to the Bureau of Accounts of this Commission for approval before the permanent accounting records are made; and

It is further ordered, That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's property, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, except as provided herein, or until further action by this Commission upon confirmation of the plan by the court.

By the Commission.

W. P. Bartel,
Secretary.

(Seal)

531 And on, to wit, the 14th day of June, A. D. 1940, came the Interstate Commerce Commission by its attorneys and filed in the Clerk's office of said Court its certain Supplemental Report in words and figures following, to wit:

532 INTERSTATE COMMERCE COMMISSION.

Washington.

* * (Caption—10882) * *

SUMMARY OF SUPPLEMENTAL REPORT.

The plan of reorganization approved by the order of February 12, 1940, is modified in the following particulars:

Additions and Betterments Fund.

The annual payment which may be made at the discretion of the board of directors shall follow, rather than precede, the payment of contingent interest on the new general-mortgage series A bonds and the modified Terre Haute bonds.

Any unappropriated balance in the fund at the end of a year shall be transferred to the reserve and retirement fund.

Reserve and Retirement Fund.

The order of purposes to which moneys in this fund may be applied are clarified.

Any unappropriated amount at the end of a year may be applied to the retirement of first mortgage bonds within a total appropriation of $5,000,000.

Any excess of the unappropriated amount over $5,000,000 shall be applicable mandatorily to the retirement of first mortgage bonds.

Voting Trust.

A voting trust for a term of five years shall be created for the new preferred and common stocks, the five voting trustees to be designated by the same interests that designate the members of the reorganization committee.

Reorganization Committee.

The five members of this committee shall be designated as follows: one by the institutional investors' group com-

mittee, one by the mutual savings bank group, one by the Reconstruction Finance Corporation, one by the protective committee for the 50-year mortgage bonds, and one by the trustee of the convertible adjustment mortgage.

Board of Directors.

The former provision for the designation of the first board of directors by the reorganization committee is eliminated.

Cumulative Interest on New General Mortgage Bonds.

The provision regarding the determination of the total accumulation of 13½ percent is clarified.

New Mortgages.

Provisions introduced permitting modification of the mortgages with the consent of the holders of 66 2/3 percent of the bonds outstanding, subject to Commission approval.

Provision introduced in the general mortgage as to the determination of available net income in the event of consolidation with another company.

Chicago, Milwaukee & Gary.

Assignment of new securities to the holders of first mortgage bonds modified so that such bondholders shall receive new preferred stock in respect of 75 percent of the total claim for principal and accrued interest, and new common stock for the balance on the basis of $100 a share.

533 Equipment Obligations.

Revision of provisions for existing obligations so as to permit the refinancing of matured certificates of series A, C, D, E, F, G, H, J, K, and L with the approval of the court, all other equipment obligations to remain undisturbed as to lien and interest and assumed or paid by the new company.

New Capital Structure and Allocations of Securities.

A revised appendix to the report reflects the change made in the treatment of the Gary bonds.

Supplemental Order.

The attached supplemental order embraces the modifications of plan approved and supersedes the order of February 12, 1940.

INTERSTATE COMMERCE COMMISSION.

* * (Caption—10882) * *

Submitted April 22, 1940. Decided June 4, 1940.

Upon petition, plan of reorganization for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, pursuant to section 77 of the Bankruptcy Act, as amended, modified and approved.[1]

Appearances as in prior report, and also Edward R. Johnston, Robert N. Hawes, Douglas B. Steimle, George John Miller, and Elmer E. Boyner.

SUPPLEMENTAL REPORT OF THE COMMISSION.

By the Commission.

By our report and order of February 12, 1940, in this proceeding, 239 I. C. C. ....., we approved a plan of reorganization for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, such plan embracing certain provisions affecting the Chicago, Terre Haute and Southeastern Railway Company, a lessor company not in trusteeship under section 77 of the Bankruptcy Act, as amended. Proceedings for reorganization of the debtor are pending in the United States District Court for the Northern District of Illinois, Eastern Division.

534 The abbreviated titles used in our prior report will be used herein.

On or prior to April 12, 1940, petitions for modification of the approved plan were filed by or in behalf of (1) the institutional investors' committee, (2) the mutual savings bank group, (3) the Terre Haute bondholders' group, (4) the United States Trust Company of New York, trustee of the debtor's general mortgage, (5) the Guaranty Trust Company of New York and Merrel P. Callaway, trustees of the debtor's 50-year mortgage, (6) the National City Bank of New York and William W. Hoffman, trustees of the debtor's adjustment mortgage, (7) the St. Louis Union Trust Company and Illinois State Trust Company, trustees of the Gary first mortgage, (8) the protective committee for the holders of the debtor's preferred stock, (9)

1. Previous reports: 212 I. C. C. 150 and 225; 224 I. C. C. 219; 228 I. C. C. 180; 230 I. C. C. 548; 233 I. C. C. 759; and 239 I. C. C. .....

Israel A. Abrams, et al., owners of certain adjustment mortgage bonds, and (10) Alfred Wolstenholme, et al., also owners of adjustment mortgage bonds, all interveners in this proceeding. The parties named under (1), (2), and (3), above, requested permission to be heard in oral argument if their petitions were opposed.

Replies were filed by the City Bank Farmers Trust Company, trustee under the Milwaukee & Northern mortgages, by the trustees under the debtor's adjustment mortgage, and by the Finance Corporation, in part opposing and in part approving the petitions filed by the three groups mentioned. The institutional investors and the savings bank group also filed briefs replying to certain proposals or contentions of other interveners. Two parties desired to be heard if oral argument is granted and one party asked that a rehearing be held.

After the expiration of 60 days from the date of our order approving the plan, the debtor presented for filing a petition requesting a modification of the approved plan so as to provide for the allotment to the existing stockholders of warrants to subscribe, during a period of 10 years, to new common stock at $50 a share on the basis of one share of new common stock for each share of existing preferred stock, and one share of new common stock for each three shares of existing common stock. In view of the provisions of section 77(d) authorizing us to modify approved plans upon petitions for good cause shown, filed within 60 days of the date of the order approving the plan, we are constrained to find that this petition was presented too late for our consideration. However, essentially the same proposal is submitted by the protective committee for the preferred stock and is hereinafter discussed.

We have given careful consideration to the modifications of plan requested. We conclude that the questions involved may be disposed of on the basis of the present record and that neither oral argument nor a further hearing is required.

1. Institutional investors' group.

The committee representing this group requests 11 specific modifications of plan, as described below, and suggests certain revisions in the new capital structure to give effect to such modifications.

(a) The committee urges the elimination of the provision for the additions and betterments fund permitting the

board of directors, in its discretion, to increase the payment into the fund beyond $2,500,000, which is mandatory, provided the total amount set aside does not exceed $5,000,000, or 4 percent of railway operating revenues, whichever is the greater. If the discretionary payment is to be retained, the committee asks that it be made immediately after, rather than before, the payment of contingent interest on the new general-mortgage bonds, series A, and that in such event the provision with respect to 4-percent of railway operating revenues be eliminated.

535 Referring to the debtor's various statements of its needs, the committee points out that under the 1935 plan, the board of directors was to have the discretionary right to apply any amount, up to $5,000,000, to an additions and betterments fund, but this would follow fixed charges of more than $9,000,000, whereas in our plan half of the payment to a $5,000,000 fund is made mandatory while the prior fixed charges are reduced to about $4,300,000 a year. Comparing the debtor's estimates and its actual cash capital expenditures, including down payments for new equipment and payments of principal on equipment obligations, the committee offers detailed figures, obtained from the trustees' books of account, to show that the average annual expenditures amounted to $10,233,142 for the three years 1937-39, $10,563,085 for the four years 1937-40, and $9,210,646 for the nine years 1931-39. The debtor's estimate of its gross requirements was $12,900,000 a year. Against these requirements the company would apply the cash represented by charges to depreciation, retirements, and salvage, together with cash from the additions and betterments fund. The committee contends that a payment of $2,500,000 a year to the additions and betterments fund, cumulative for one year, together with funds available from depreciation on equipment, etc., would exceed any reasonable requirements, and that a further discretionary payment would impose an unwarranted and unnecessary sacrifice upon the creditors. Reference is made to the evidence that the road has been maintained in excellent condition.

Calculations were submitted by the committee to show that if the discretionary payment to the fund should be retained and if it should follow the payment of interest on the general mortgage bonds of series A, the return to the holders of the present general mortgage bonds would be materially improved, such series A bonds being al-

lotted to them in respect of 35 percent of their claim. Other calculations showed that, on the average for either the nine year period or the 16 year period ending with 1939, the funds available on the basis of this provision for the discretionary payment would have exceeded the actual amount of capital expenditures.

The capital requirements of the system have varied from year to year within the wide limits; for example, the debtor showed the gross charges to additions and betterments during the period 1928 to 1937, inclusive, when the maximum amount was $26,792,972, in 1930, and the minimum was $2,067,497, in 1933. For the recent period 1937 to 1940, inclusive, the committee shows the total cash capital expenditures as varying between $9,178,261 and $11,552,916 a year. Generally speaking, the expenditures for additions and betterments have varied in proportion to earnings available for interest. Ordinarily with a rising trend in traffic and revenues the carrier would need more or better facilities, and the increased income should properly provide, in part, for their cost. In years of minimum earnings, it appears that a payment of $2,500,000 to the additions and betterments fund would be sufficient. Placing the discretionary additional payment after the payment of interest on the new general-mortgage series A bonds would materially enhance the value of those bonds. We are of the opinion that this change in the plan will not operate to deprive the new company of cash for additions and betterments when improvements, extensions, etc., are needed to handle increased business, because in that event the record justifies the conclusion that the earnings will be such as to cover all the interest requirements of the series A bonds and the contingent interest requirements of the modified Terre Haute bonds. It is not equally clear, however, that the discretionary payment can be placed behind the interest payments on the new 536 general-mortgage series B bonds, as suggested by the mutual savings bank group. In that case, charges approximating $12,500,000 a year would have to be met before any payment could be made to the additions and betterments fund in addition to the mandatory payment. We think that such an arrangement would not be in the best interest of the property.

As to the provision for the discretionary payment whereby 4 percent of total revenues would constitute the payment if the amount so determined should exceed $5,

000,000, we are of the opinion that no change should be made. Should the carrier ever regain the high earning power that would make the 4-percent provision operative, it is probable that the increased payment into the fund would be needed.

We conclude that the so-called discretionary feature of the additions and betterments fund should be retained in the plan in order that the new company may have the benefit of an adequate additions and betterments fund, if and when it is needed, but that the plan should be modified, according to the alternative request of the investors' group committee, so that such discretionary payment shall be made out of available net income, as defined in the plan, following instead of preceding the payment of contingent interest on the general-mortgage series-A bonds and the modified Terre Haute bonds. Accordingly, part H of our order will be modified in the following respects:

Under the provisions for the application of available net income, a proviso will be added to clause (B) in section (1)(b) so that such clause will read:

> (B) plus such additional amount as the board of directors shall determine to set aside for the fund out of available net income for the income period, provided that the total amount so set aside for the income period under clauses (A) and (B) hereof shall not exceed $3,000,000, or 4 percent of railway operating revenues, whichever amount is greater, less any amount applied out of the reserve and retirement fund for the income period for capital expenditures other than payments of equipment obligations and payments on account of new equipment; and provided, further, that such additional payment determined by the board of directors under clause B of this section shall be made only out of the available net income remaining after the payment of the full contingent interest on the general-mortgage series-A bonds of the new company and the modified Terre Haute bonds, as hereinafter provided.

Likewise under the provisions of the order for the application of available net income, section (4) will be modified and subdivided as follows:

> (4) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the

new company's general-mortgage income bonds of series A, and any accumulation thereof, together with the contingent interest on the four issues of Terre Haute bonds, (which shall rank with the general-mortgage series-A bonds of the new company), up to the limiting rate of 1.5 percent per annum fixed in the supplemental indentures, and any accumulation thereof; all such contingent interest payments being in multiples of ¼ of 1 percent. In periods when the available net income is not sufficient to enable the new company to pay the full rate on the series-A bonds the ratio of the rate actually paid to the rate of 4½ percent shall be applied to the 1.5-percent rate on the new Terre Haute bonds in determining the amount of the contingent interest payment on the latter bonds, so that the Terre Haute bondholders of each class shall receive the same proportion of the contingent interest payment due on their bonds as will the debtor's creditors who receive the general-mortgage series-A bonds.

(5) Any then remaining available net income after payment of the full amount of interest due on the general-mortgage series-A bonds and the modified Terre Haute bonds, shall be applied to the additions and betterments fund to the extent that the board of
537 directors shall authorize a payment thereto in addition to the mandatory payment of not less than $2,500,000, all as provided above in connection with the additions and betterments fund.

(6) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new general-mortgage bonds of series B and any accumulation thereof; and if the available net income exceeds the interest requirements of such series B bonds, then to the payment of contingent interest on any later series which may be issued and outstanding, with such priority as between the several later series as may be provided in the bonds of such series. If interest is payable for any income period on general mortgage income bonds of series later than series A and series B, bearing interest at different rates but without priority as to payment as between each other, and the available net income applicable thereto shall be insufficient to pay all unpaid interest for such

income period, including accumulations, the amount applicable shall be apportioned among the several series of such bonds later than series A and series B, in proportion to the unpaid interest for such income period (excluding accumulations) on the bonds of the several later series, respectively.

In view of the foregoing subdivision of section (4) of part II of the order into sections (4), (5), and (6), the three sections following will be renumbered (7), (8), and (9).

(b) The committee requests modifications in our provisions for the reserve and retirement fund in the following respects:

(1) That moneys remaining in this fund after the payment of equipment-trust obligations and sinking funds on bonds issued for the purchase of equipment shall be used first for cash payments on account of new equipment before use for the replacement of property retired.

The provisions of the plan describing the application of the reserve and retirement fund show the first purpose as (a), the payment of equipment-trust obligations and sinking funds for bonds issued against the purchase of equipment, and any excess thereafter will be applicable to (b), the payment in cash on account of the cost of new equipment, (c), the cost of replacement of vacancies under equipment trusts, (d), the cost of replacement of property retired, and (e) and (f) other specified purposes. This sequence appears to conform to the committee's views. However, for greater clarity we will insert in the plan an appropriate statement specifically providing that the application of funds for the purposes indicated shall be in the following order, that is, as indicated by the letters (b), (c), etc.

(2) That any unappropriated excess in the fund at the end of any calendar year, in excess of $5,000,000, should be applied to the retirement of first mortgage bonds through purchase or redemption, rather than any funded debt secured by lien upon property upon which the first mortgage is a lien, as provided in our plan. The committee asserts that the latter provisions would permit the retirement of new income bonds at a heavy discount during periods when the contingent interest charges shall have been allowed to accumulate, and that

to permit the withdrawal of moneys for the purchase of such bonds prior to the payment of interest is unfair.

We approve this modification, and upon our own motion will further modify the paragraph of our order in question, so as to permit the board of directors, in its discretion to use any unappropriated balance in the fund, less than $5,000,000, for the retirement or redemption of first mortgage bonds. It will then read as follows:

> The reserve and retirement fund shall be segregated from the general funds of the new company and held in cash or invested in United States Govern-
> 538 ment securities. If, after the final computation of the amount required to be paid into said fund in respect of any calendar year, and the amount appropriated or to be appropriated therefrom in respect of expenditures made during such calendar year for the purposes described under (a) to (f) above, there shall remain an unappropriated balance, such banace of such portion thereof as will bring the appropriations for the year up to a total of $5,000,000, may be applied, at the discretion of the board of directors, to the retirement, by purchase or redemption, of any first-mortgage bonds of the new company then outstanding. In the event the unappropriated balance of the fund at the end of any calendar year shall exceed $5,000,000, the excess over $5,000,000 shall be applicable mandatorily to the purchase or redemption of such first-mortgage bonds.

In connection with the additions and betterments fund, our plan provides that if the unappropriated balance therein at the end of any calendar year exceeds $5,000,000 the excess shall be paid into the reserve and retirement fund; provided, however, that any unappropriated balance not in excess of $5,000,000 shall be carried forward in the additions and betterments fund and used for the purposes for which that fund is created. The committee requests that this provision be modified so that all unappropriated amounts remaining in the additions and betterments fund at the end of any calendar year shall be transferred to the reserve and retirement fund. This change is intended to forestall a possible accumulation of $10,000,000 in the two funds, and, by transferring the unappropriated balance in the additions and betterments fund to the reserve and retirement fund, a larger amount

will be available for emergency use and the purchase or redemption of outstanding bonds.

We approve this modification and will modify the applicable provision of the additions and betterments fund to read as follows:

> (d) If an unappropriated balance shall remain in the additions and betterments fund at the end of any calendar year, after the final determination of the amount to be paid into such fund and the amount appropriated or to be appropriated in respect of expenditures during such calendar year, such unappropriated balance shall be paid into the reserve and retirement fund hereinbefore provided for and become subject to the provisions for that fund.

(c) The committee insists that a voting trust for the new preferred and common stocks is essential for the protection of the senior bondholders and for the continuity of financial policy, and that to reorganize the company without the creation of such a trust would encourage speculation for control by means of stock purchases at low prices during the early period of the company's existence. The committee considers that senior creditors, who are called upon to make large sacrifices in the reorganization, should continue to have a voice in the management for a limited period of time. It appears that the centralization of control of the new company in the new preferred stock, until full dividends shall have been paid on that stock for three consecutive years, will have the effect of limiting control to the 50-year mortgage bondholders who will receive approximately 70 percent of the new preferred stock.

The committees' proposal is that the voting trust be in effect for a period of 10 years or until such earlier time as dividends on the new preferred stock shall have been paid in full for three consecutive years; that there should be five trustees, one designated by the investors' group, one by the mutual savings bank group, one by the joint action of these two groups, one by the Finance Corporation, and one by the adjustment mortgage bondholders and the 50-year mortgage bondholders acting together as a single class. The trustee designated by the Finance Corporation would be succeeded by one designated by
539 joint action of the institutional investors' group and mutual savings bank group, when and if the Finance

Corporation should cease to be a creditor of the company before the termination of the voting trust; otherwise the right to designate a trustee would include the right of the same interest to designate a successor trustee. The committee suggests that if, but only if, the voting trustees should be other than those proposed above, the plan should provide that the same groups which are to designate the reorganization committee should also designate the five voting trustees.

If there is to be no voting trust, the committee proposes that the initial board of directors, which, under our plan, would be designated by the reorganization committee, should serve for a period of at least three years.

Reconsideration of the matter of the need for a voting trust in the light of the committees' petitions leads us to the conclusion that such a voting trust would be desirable in order to insure continuity of managerial policy, protection to the bondholders, and proper maintenance of the property, all of which are in the public interest. In our opinion the term of the trust should not be longer than five years, subject to earlier termination when full dividends on the preferred stock shall have been paid for three consecutive years.

The manner of designation of the voting trustees which we consider desirable and proper differs from that suggested by the committee, and also from that provided in our plan for the reorganization committee. In our opinion, the same groups which are to designate the reorganization committee should also designate the voting trustees, and we further approve the committees' proposal with respect to designating the successor to the Finance Corporation's nominee.

We are not unmindful of the large interests represented by the investors and savings banks groups, but there are other large interests equally concerned in the reorganization. We think that the adjustment mortgage bondholders, in view of the amount of their claims and their future status as holders of a large majority of the new common stock, are entitled to direct representation. The plan provided that two members of the reorganization committee shall be designated by the investors' group committee and the savings bank group jointly, one by the protective committee for the 50-year mortgage bonds, one by the Finance Corporation, and one by the trustee of the

adjustment mortgage. We think that the investors' group committee and the savings bank group should each be permitted to designate one of the voting trustee and one member of the committee separately, instead of two jointly. Upon further consideration, and with the above stated modifications of the proposals of the committee, we approve the provisions for a voting trust. The following modifications of plan are made accordingly.

The new provision for the voting trust will read as follows under part N of the order:

> A voting trust shall be created into which all the preferred stock and common stock of the new company shall be placed and voting trust certificates shall be issued therefor. The voting trustees shall be five in number, one designated by the institutional investor's group committee, one by the mutual savings bank group, one by the Reconstruction Finance Corporation, one by the protective committee for the 50-year mortgage bonds, and one by the trustee of the debtor's adjustment mortgage. The trustee designated by the Reconstruction Finance Corporation shall be succeeded by one designated by the joint action of the institutional investors' group committee and the mutual savings bank committee, when and if the Reconstruction Finance Corporation shall cease to be a creditor of the company before the termination of the trust. Otherwise the right to designate a trustee
> 540 shall include the right of the same interest to designate a successor trustee. The reasonable expenses of the voting trustees, including counsel fees, shall be paid by the new company. The voting trust shall continue until five years from the date that the plan is confirmed by the court or until such earlier time as dividends on the new preferred stock shall have been paid at the full rate of 5 percent for each of three consecutive periods of 12 months.

Likewise, under part N of the order, the revised provisions for the reorganization committee will read as follows:

> The plan shall be carried out under the supervision of a reorganization committee consisting of five members, one to be designated by the institutional investors' group committee, one by the mutual savings bank group, one by the Reconstruction Finance Corpora-

tion, one by the protective committee for the 50-year mortgage bonds, and one by the trustee of the debtor's convertible adjustment mortgage. Should any of the parties named fail to designate its representative within such time as the court shall consider reasonable, the court shall appoint such representative. The member designated by the Reconstruction Finance Corporation shall be succeeded by one designated by the joint action of the institutional investors' group committee and the mutual savings bank group, when and if the Reconstruction Finance Corporation shall cease to be a creditor of the company before the termination of the voting trust. Otherwise the right to designate a member shall include the right of the same interest to designate a successor. The reorganization committee shall determine the method of carrying out the plan, subject to approval by the court, and the form, except as herein otherwise expressly provided, and the provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan. The reorganization committee shall not be authorized to solicit deposits of securities for other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation pursuant to Section 77(p) of the Bankruptcy Act, as amended.

The plan will be modified further by eliminating from part N of the order the provision that the board of directors of the new company shall be designated initially by the reorganization committee. The revised provision for the board of directors will read as follows:

The board of directors of the new company shall consist of not less than seven nor more than fifteen members who shall be elected by the stockholders in the manner described in connection with the voting rights of the new stock.

(d) The committee considers that the fixed interest charges under our approved plan are far lower than the record justifies, and that, instead of placing the interest rate for the modified Terre Haute bonds on the basis of 2.75 percent fixed and 1.5 percent contingent, the rate should be at least 4 percent fixed interest, thus increasing the probability of the Terre Haute bondholders' consent to the plan.

(e) On the basis of larger permissible fixed charges the committee also asks that new first-mortgage 4-percent bonds be assigned to the holders of the Milwaukee & Northern first-mortgage bonds on the basis of 100 percent of their claims, instead of 70 percent, as provided in our plan.

The combined effect of proposed revisions (d) and (e) would be to increase fixed interest charges by approximately $300,000 per annum. As we indicated in our prior report, no increase in the amount of future fixed charges should be permitted. The petition contains no new facts or considerations which justify a material alteration in the capital structure and allocation of securities previously arrived at in our best judgment. A reasonable margin above fixed charges operates not only to the advantage of the company in times of depressed earnings but also to the benefit of the holders of contingent interest
541 bonds and to the marketability of all classes of the securities. We disapprove any modification of the plan involving an adjustment of the interest provisions for the Terre Haute bonds and of the allocation of new bonds to the holders of the Northern's first-mortgage bonds.

(f) The provision in our plan for the payment of interest on the new general mortgage bonds, series A and series B, was that such interest would be contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent (including interest for the income period next preceding), whether for consecutive or nonconsecutive periods, etc. The committee points out that the phrase in parenthesis might have the effect of reducing the permissible accumulation to two years, or 9 percent, under certain conditions, and requests that it be stricken.

We recognize the possibility of confusion in this provision and approve its modification. Under part F of the order the paragraphs describing the terms of the new series A and series B general mortgage bonds will in each case be modified by eliminating the parenthetical clauses concerning the income period next preceding and introducing the following:

> * * * Interest owing as a debt in a given year but which is paid on the interest payment date or dates in the succeeding year shall not be included in calculating the 13½ percent.

(g) The committee requests us to eliminate the following proviso from the additions and betterments fund and from the reserve and retirement fund: "* * * provided, however, that, subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mortgage bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage bonds may be issued." This proviso accompanies the requirement that, in the case of expenditures from either fund, the new company shall not have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends, in priority to, or on a parity with, the new preferred stock, to capitalize or reimburse such expenditures.

The committee suggests that the foregoing proviso is unnecessary in view of the provisions elsewhere stated in the plan regarding the bases upon which additional first-mortgage and general-mortgage bonds may be issued, and that it should be eliminated in order to avoid the possibility of ambiguity and confusion. There is no apparent conflict between these provisions and we think the proviso in question is appropriate for the completeness of the plan.

(h) The committee proposes that each new mortgage contain a provision that any alteration or modification thereof shall be made only with the consent of the holders of two-thirds of the bonds outstanding. We approve this provision, with the proviso that all modifications of the mortgages shall be subject to our approval. The new provision will read as follows:

> The mortgage shall provide, within conditions and limits to be therein prescribed, for the alteration and modification thereof and of any or all supplements thereto and of the rights and obligations of the new company and of the holders of the bonds thereunder at any time by the concurrent action of the new company and of the holders of not less than 66⅔ percent in aggregate principal amount of the bonds then outstanding affected by such change or modification; provided, that no such change or modification shall alter or impair the obligation of the new company to pay the principal of any bond or the interest thereon without the consent of the holder of such bond; and

provided further, that all changes or modifications shall be subject to the approval of this Commission.

542 In addition to the foregoing, the following new provision for the new general mortgage, suggested by the committee, is approved:

> In the event of any unification of the properties of the new company with the properties of any other company, the modifications thus authorized may include provisions excluding, in whole or in part, the earnings from such other properties in determining available net income, and providing for the determination of such available net income without the maintenance of separate accounts.

(i) The committee suggests that the conversion provision for the new series-B general mortgage bonds should be on the basis of 15 shares of common stock for each $1,000 of bond, instead of 10 shares, on the ground that there would be no incentive to convert on the latter basis. In the capital structure which we have approved, the 10-share basis approximates the 15-share basis in the capital structure proposed by the committee, if the latter be adjusted to the obligations outstanding on December 31, 1938, as shown in the debtor's suggested modifications of the committee's plan. The change to 10 shares is accounted for primarily by the lesser number of shares of common stock to be issued under the approved plan, as compared with the committee's plan, thus increasing the indicated equity value of the new stock. We do not approve the 15-share basis under these circumstances.

(j) In connection with the new preferred stock (part I of our order), the committee suggests that the holders of the preferred should elect the board of directors by cumulative voting until the holders of the common become entitled to vote, i. e., after the company shall have earned the full dividend requirements on the preferred for three consecutive years. Our order provided that in the latter event the voting should be cumulative and it is evidently appropriate that the voting by the preferred stockholders should be cumulative also. The provision in question will be revised to read:

> The holders of preferred stock, series A, shall be entitled to voting power on all matters in respect of which stockholders of any class shall be entitled to vote, and shall further be entitled, voting cumula-

tively as a class, to elect a majority of the board of directors of the new company until full 5-percent dividends shall have been paid upon the preferred stock, series A, for three consecutive calendar years. Thereafter * * * (continuing without modification).

2. Mutual savings bank group.

Like the institutional investors' committee, this intervener requests that the plan be modified by providing for a voting trust for the new preferred and common stocks, for five voting trustees, designated by the same parties that designate the five members of the reorganization committee (such parties not being those named in the approved plan), and for a revision of the discretionary feature of the additions and betterments fund. The group's proposals, however, differ from the institutional investors' in some respects, viz., that the discretionary portion of the payment to this fund, if permitted to remain in the plan, would follow the payment of interest on the series B general mortgage bonds, rather than the series A bonds, and that one member of the reorganization committee would be designated by the committee representing the 50-year mortgage bonds rather than by the holders of the 50-year bonds and the holders of the adjustment mortgage bonds acting jointly.

These matters have been discussed in connection with the investors' group petition and no further comment is necessary.

3. Terre Haute bondholders' group.

Our plan provides that, upon the securing of consent from substantially all the holders of Terre Haute 543 bonds, the existing four mortgages would be modified, without disturbing their liens, and the bonds issued thereunder correspondingly modified, or new bonds issued in exchange for the existing bonds, so that the maturity of all such bonds will be the date of maturity of the first-mortgage bonds of the new company, and all such bonds will bear fixed interest at the rate of 2.75 per cent per annum and contingent interest at the rate of 1.5 per cent per annum, with further provisions regarding the waiving of equipment vacancies under the existing mortgages, abandonments of property, and the making of a new lease; the new company to assume obligation with respect to the Terre Haute bonds as modified. In the event the court

should determine that these provisions shall not have been accepted by substantially all the Terre Haute bondholders, it is provided in the plan that the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of principal and interest on the Terre Haute income mortgage bonds, be rejected without prejudice to either the negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company on terms subject to our approval.

The bondholders' group objects to all the foregoing provisions and requests us to provide in the plan that the new company shall assume the existing lease and the guaranty of the Terre Haute income bonds. The petition states: "The plan—cannot be supported either on the facts or the law in the purpose expressly declared of forcing a change in the interest rate on the Terre Haute bonds and a waiver of all defaults under the lease of the Terre Haute to the debtor under threat of rejection of the lease in case the bondholders do not consent, even though the lien of the mortgages securing the four Terre Haute bond issues be not disturbed. This, it is said, follows from the fact that the Terre Haute is not a debtor in any section 77 proceeding before the Commission and is not in receivership in any State or Federal court. Furthermore, the group suggests that not only is the Commission without power to compel rejection of the lease but even the United States District Court has no power to direct its rejection, for the leasehold is a profitable one, and only leases burdensome to a bankrupt—or debtor—may be rejected or disaffirmed under the direction of the court." It is further contended that the lease may not be rejected even when such rejection forms a part of a plan of reorganization, which it does in this proceeding. We do not agree with the reasoning in that respect and do not regard the court decisions cited in the group's petition as pertinent. Section 77 clearly provides that a plan may reject unexpired leases.

Our conception of the position of the Terre Haute and its bondholders with respect to this proceeding and our jurisdiction are made clear in our prior report. We concluded that the desirable consolidation of the Terre Haute lines with those of the debtor, and the exchange of new system bonds for the existing Terre Haute bonds, were impracticable in connection with the plan because of the legal obstacle lying in the fact of the Terre Haute's out-

side status. Despite this fact the Terre Haute is in practical effect a part of the Milwaukee system, its bondholders are essentially system creditors, and a disruption of the lines would be to the disadvantage of both companies. We have been and remain strongly of the opinion that the plan should provide some means for retaining the Terre Haute lines as a part of the system without unduly jeopardizing a successful reorganization of the Milwaukee. In harmony with this idea we inserted in the plan the provisions outlined above, which were the best that we could devise in the public interest and as affording fair and equitable treatment to both the bondholders of the Terre Haute and those of the debtor. However, in order that the plan might
544 be consummated on this basis, it was necessary to provide that substantially all the Terre Haute bondholders consent to the proposals, in contrast with the more-than-two-thirds majorities in the case of the several classes of Milwaukee creditors. It is doubtful that any plan could accomplish the desired ends if the Terre Haute bondholders, on jurisdictional grounds, are sufficiently opposed, but we still think that these bondholders should have the proposals presented to them and be afforded the opportunity to either accept or reject them.

In the event of rejection there would seem to be no alternative but a rejection of the present lease, and the plan so provides. Such rejection is not intended as a threat. It is a necessary step in order that the processes of reorganization of the Milwaukee may not be thwarted. Without rejection of the lease the difficulties of effecting a reorganization, along the lines of the capital structure shown in the approved plan, are evident. The present interest charges on the Terre Haute bonds are approximately $1,023,000 a year. This exceeds the fixed interest requirements in respect of the modified Terre Haute bonds, under the approved plan, by about $420,000. Retaining the present fixed rental payments and at the same time keeping total fixed interest charges to about $4,270,000 a year, as provided in our plan, would thus necessitate reducing the amount of new first mortgage bonds issuable by $10,500,000. Such reduction would mean a substantial sacrifice by the creditors of the debtor who are to receive first-mortgage bonds in part settlement of their claims—a sacrifice in favor of the Terre Haute bondholders which, in our opinion, would be entirely inequitable. There would still remain unsettled the matter of the equipment vacancies on the

Terre Haute. Under these circumstances we consider that there is no justification for the approval of a plan based upon the assumption by the new company of the lease, the guaranty of the Terre Haute income bonds, and the other obligations growing out of the lease. If the Terre Haute bondholders do not accept the proposals for modification of bonds, etc., a rejection of the lease clearly would be justified in order that the reorganization may proceed according to the plan.

In the event the proposals be rejected, and the alternate provisions of the plan with respect to the Terre Haute become operative, all claims for damages growing out of the unfulfilled provisions of the rejected lease and the guaranty of the income bonds, in order to be recoverable at all against the debtor's estate, as we understand the matter, would have to be filed with the court in this proceeding. It is also our understanding that such claims would have the status of general unsecured claims. Accordingly, the holders of such claims, to the extent allowed by the court, would participate with other general unsecured creditors in the distribution of such new securities as are provided and available under the plan.

4. General mortgage trustee.

The United States Trust Company of New York joins in the several requests made by the institutional investors' group, and further asks that the plan be so modified that the holders of the general mortgage bonds shall receive new securities having a first lien on the mortgaged property and its earnings, and such junior lien securities as may be proper in a sound capitalization, not diluted in either case by the inclusion of bonds allocated to junior lienors; or, in the alternative, that the trustee of the general mortgage be left free to foreclose its mortgage. The trustee argues that the rights created by the general mortgage are impaired by the provisions of the plan which would force the bondholders to surrender their bonds in exchange for the bonds and stock of a company saddled with the unprofitable lines west of Mobridge which are
545 not included in the present mortgage and which will divert part of the earnings of the property now subject to the first lien of the mortgage.

5. 50-year mortgage trustees.

The Guaranty Trust Company of New York and Merrel P. Callaway, trustees, pray that the plan be so modified as to afford fair and equitable recognition to the position and rights of the holders of the 50-year mortgage fives of '75. The trustees, together with others representing this class of creditors, have objected throughout to the use of the segregation of system earnings presented at the later hearings and to any plan which impairs their lien position with respect to the western lines and the securities which are pledged under the first and refunding mortgage. The mortgage trustees suggest that consideration be given to the creation of a separate company to own the western lines and the "pieces of lines east", and to make an operating arrangement with the parent company. The securities of the subsidiary would be pledged under an issue of system collateral income bonds and these bonds would be assigned to the holders of the 50-year mortgage bonds in lieu of the new preferred stock shown in our plan.

6. Adjustment mortgage trustees.

The National City Bank of New York and William W. Hoffman ask that the plan be modified (1) by recognizing the entire claim of the holders of the adjustment bonds for principal and interest accrued to the effective date of the plan and increasing the amount of new common stock allotted, notwithstanding the resulting increase in total capitalization, (2) by providing for the settlement of claims other than those of the adjustment mortgage bondholders by a larger proportion of common stock, (3) by revising or eliminating the provision respecting the maximum amount of bonds which may be pledged as collateral security for loans and the provision for a mandatory additions and betterments fund, (4) by providing for the issue of at least $10,000,000 of first-mortgage bonds in emergencies, (5) by eliminating the provision that no dividends be paid on the new common stock until dividends on the preferred shall have been paid for three years, and the provision for participation of the preferred and common stocks in dividends under stated conditions, and (6) by eliminating the provision for the election of a majority of the board of directors by the holders of the preferred stock until full 5-percent dividends shall have been paid for three consecutive calendar years.

7. Gary first mortgage trustees.

The St. Louis Union Trust Company and the Illinois State Trust Company contend that the holders of the Gary bonds are treated inequitably under our plan with respect to the other creditors, that the doctrine of the "Boyd case" is violated, and that the value of the new securities allocated will be less than the sale value of the mortgage property. The trustee suggests that the plan be modified so as to allocate to the Gary bondholders new securities on a basis similar to the allocations made in the approved plan to the debtor's general mortgage bondholders, and in the alternative that the Gary properties be excluded from the plan of reorganization and the bondholders be permitted to look to the value of the properties covered by the lien of their mortgage.

8. Protective committee for preferred stock.

The protective committee for preferred stock confines itself to a request that we reconsider the treatment of the debtor's preferred stock. Our attention is directed to the present trend of earnings, including the first two months of 1940, to the excellent condition of the property, to the savings being effected through various improvements, and to the elements of value of the property reported by our
546 Bureau of Valuation. The committee thinks that new securities, or at least warrants, should be issued to the holders of the preferred stock.

9. Israel A. Abrams, et al.

The petition filed in behalf of Israel A. Abrams and others whose interest is in the adjustment mortgage bonds, contends that the holders of such bonds should receive new income debentures for part of the claim and new common stock for the balance, the debentures to rank junior to the general mortgage income bonds issued to the senior bondholders. The petitioners wish to retain their lien position on the basis of their claim to the free assets of the debtor, including working capital.

10. Alfred Wolstenholme, et al.

The petition of Alfred Wolstenholme and others also concerns the adjustment mortgage bonds and contains substantially the same request and argument as the Abrams petition.

Petitions Nos. 4 to 10, as enumerated above, present few facts or contentions not previously introduced. The capital structure and allocation of securities shown in the approved plan were determined from a careful consideration of the evidence, and we find nothing in the petitions now before us to justify the numerous modifications requested. We are convinced that, within the limits of total capitalization and total fixed charges approved, any material changes in the distribution of the new securities would render the distribution less equitable from the standpoint of relative rights.

The question of the formation of a separate corporation for the Milwaukee's western lines or of the separation of the western lines from the rest of the system by a separate mortgage has been considered by us heretofore in connection with the plan and we are of the opinion that there would result no advantage therefrom to the present holders of the 50-year mortgage bonds and the general mortgage bonds, respectively. It seems to us of great importance that a completely unified system be created through the reorganization and that the capital structure be not complicated by numerous mortgages. Thus, the plan eliminates the Milwaukee & Northern mortgages and the Gary mortgage. Properly, it should eliminate the Terre Haute mortgages also.

The objections of the holders of the 50-year mortgage bonds to the earnings study as a basis for the allocations of new securities were stated and discussed in our prior report. The bondholders' witness analyzed the debtor's computations which showed a loss of approximately $1,000,000 in 1936 on the western lines, and concluded that on the basis of system earnings of about $12,300,000 a year approximately $2,000,000 was earned in that year for the 50-year mortgage bonds, or 38 percent of their interest requirements. On the same basis the interest requirements on the general mortgage bonds were found to be fully earned.

In addition to these estimates, the record contains studies, referred to in our previous report, showing losses by the western lines of $142,591 in 1930 and $1,540,808 in 1931, before payment of interest. We are satisfied that on any reasonable basis of allocation between the lines west and the other parts of the system, the lines west cannot be expected to earn any sum for the payment of interest. In years when the system earnings approach $10,000,000, some

interest is apparently earned for the 50-year mortgage bonds under the present capital structure, but this reflects system operation and does not demonstrate any earning power for the western lines.

The 50-year mortgage bondholders criticize our previous conclusions as to the value of their interest in the
547 property of the debtor on the ground that we have not considered the physical value of the property subject to their mortgage. The elements of physical value referred to were before us, and were considered by us. It is important that the lien of these bondholders upon the western lines and upon the securities indirectly pledged under the mortgage is subject to claims of approximately $13,000,000 secured by the prior lien of the first and refunding mortgage. It is clear that in the light of the above-described evidence as to earning power of the western lines, the same weight cannot be accorded the physical value of the properties as might be under conditions of higher earning power.

It will be observed that the new capitalization which we have approved permits only 25 percent of the general mortgage claim to be translated into new first-mortgage bonds and only 35 percent into income bonds. With relation to this treatment, we are satisfied that the treatment of the 50-year mortgage bonds must be regarded as fair.

The request of the adjustment mortgage trustees that the allotment of common stock to the holders of the adjustment bonds be increased, and that a larger proportion of common stock be assigned to the senior bondholders, is in the nature of a complete revision of the plan without supporting evidence other than that which we have previously considered in connection with the plan that we have approved. The trustees object to the restrictions in the plan with respect to the payment of dividends on the common stock and the provision that the holders of the preferred stock shall be entitled to elect a majority of the board of directors until full dividends shall have been paid on the preferred stock for three consecutive years. We think that these requirements are sound in principle. The adjustment mortgage bondholders will be represented on the board of voting trustees.

The Gary, through its predecessor company, was projected as an outer belt line around the Chicago district from Milwaukee, Wis., through Rockford, Kirkland, Aurora, and Joliet, Ill., to Gary, Ind. Only two portions

were built, one between Rockford and Aurora, and the other between Joliet and Delmar, Ill., where connection is made with the Terre Haute. Trackage over the Elgin, Joliet & Eastern between Aurora and Joliet was secured to connect the two constructed portions. About 15 miles of that portion of the line between Rockford and Kirkland has been abandoned. At Rockford the Gary serves an extensive industrial area on the east side of the river. Its property there includes certain terminal facilities and industrial tracts. The existing trackage agreement between the debtor and the Elgin, Joliet & Eastern is for a term of 10 years from September 3, 1930, and thereafter until either party gives six months' notice of its desire to terminate it. By this agreement the train-mile charge was raised from $0.75 as provided in the previous agreement to $1.75, and the minimum rental per day from $33.75 to $75. It prohibits the debtor from transporting, over that portion of line covered by the agreement, traffic originating at or destined to the Joliet and Aurora switching areas, except company material. It restricts the freight to be handled by the debtor over that portion of line to such traffic as is handled in road-haul service by the debtor exclusively and to such traffic as "originates at and also is destined to points on" the debtor's system, except that the debtor may haul over that section of line traffic between points of origin or destination on its system and points of origin or destination on lines of railroads which connect with it at points west and north of the Illinois and Des Plaines Rivers. Thus, the transportation of traffic to the East over this portion of line is very much restricted, if not entirely prohibited.

Prior to 1930, while the debtor, as the sole holder of the Gary's stock, operated the Gary's property as part of its system, separate reports for the Gary were kept. In 548 the six-year period 1922-27 it had an average yearly deficit of $58,908 before interest. In 1928 and 1929, it earned $133,350 and $180,622, respectively, for the $150,000 of interest on the outstanding bonds. Since the consolidation of the properties of the Gary with those of the debtor in 1930, separate reports have not been kept. However, the debtor, using transportation records of shipments transported, and applying divisions of tariff rates in effect prior to 1930, estimated that in 1933, 1934, and 1936, the property of the Gary earned for interest $142,000, $60,000, and $54,161, respectively.

A substantial part of the freight movements over the Gary property is "bridge traffic" between Delmar and Kirkland. In 1928, for example, this bridge traffic produced revenues of $325,537, divided $108,839 from commercial traffic, and $216,698 from company material, mostly coal from the Terre Haute lines, at tariff rates. In 1936 the commercial bridge traffic produced only $4,523 in revenues and the company material produced $222,913 (at divisions of tariff rates in effect prior to 1930), a total of $227,436. This bridge traffic could have moved via Blue Island and Bensenville. The debtor explains that the only reason this bridge traffic was moved over the Gary was that it was found economical to fill out trains over the Gary with this traffic in view of its contract with the Elgin, Joliet & Eastern to pay a minimum trackage rental whether the line was used or not, and because of its having to maintain service for certain local industries on the Gary, principally the American Steel & Wire Company at DeKalb. By substituting the estimated cost of $98,818 for moving this bridge traffic over the Bensenville route for the $227,436 revenues on it, at so-called tariff rates over the Gary in 1936, the debtor estimates that the total revenue properly attributable to the traffic that moved over the Gary property would be $303,524, and that there would result a deficit of $45,816, before interest in that year. By similar computations it estimated deficits before interest for 1928, 1933, and 1934 of $5,187, $34,000, and $84,000, respectively, and $7,510 available for interest in 1929.

The debtor regards these results as more accurately indicating the earning power of the Gary property than by the use of the old tariff rates on the bridge traffic. It, however, submitted certain estimates to show the worth of the traffic which the Gary properties otherwise contribute to the debtor's system. Based upon transportation records for 1936 and divisions of tariff rates applicable prior to 1930, revenues derived by the debtor from traffic originated, terminated, or interchanged with other lines at points on the Gary were $418,316, of which $307,285 was derived from traffic to or from Rockford, and $111,031 to or from all other stations on the Gary. The debtor estimates that it would lose 75 percent of that traffic, or revenues amounting to $313,737, if it lost control of the Gary property, and that by deducting from such revenues of $313,737 the estimated cost of $218,988 (using system freight operating ratio of 69.8 percent) of handling the

freight producing that revenue, the resulting amount of $94,749 would represent the worth to the debtor's system that would be lost to the system if the control of the Gary were lost. The debtor then applies to the $94,749 the deficit before interest of $45,816, computed as above shown, and treats the resulting net, amounting to $48,933, as representing an approximate equivalent of what the Gary produced for the system for interest in 1936. Similar estimates of $129,927 in 1928, $145,210 in 1929, $25,218 in 1933, and a deficit of $32,813 in 1934, developed by similar methods, are shown. The trustee under the Gary mortgage points out that the debtor could more appropriately have used a ratio of 50 percent, instead of its system ratios ranging from 64.3 to 69.8 percent in computing the cost
549 of handling the contributed traffic beyond the points of interchange with the Gary.

As of December 31, 1935, the cost of reproduction less depreciation of the Gary property plus value of lands and rights, determined in accordance with methods frequently explained in our reports dealing with valuation for rate-making purposes, was $2,284,008. The final rate-making value as found by division 1 as of June 30, 1915, was $2,729,475.

It is apparent to us that the Gary property, split into three disconnected portions as it is, and so dependent upon the Elgin, Joliet & Eastern, a competing line, for the much restricted trackage rights described, has very limited earning power as a railroad. The property and facilities at Rockford, however, are fairly productive of revenues not only for the Gary property as such but also for the debtor's system, as above indicated. Under all the circumstances we are of the opinion that the Gary bondholders should receive somewhat better treatment in the allocation of new securities than in the approved plan, and we accordingly find that the plan should be modified so as to allocate to the Gary bondholders 75 percent of the principal of their claims, including accrued interest, in new preferred stock, on the basis of $100 par value of preferred stock for each $100 of claim, and the remainder thereof in new common stock on the basis of one share of common stock for each $100 of claim.

The modification of plan with respect to the Gary affects part of the capital structure, annual charges, etc., shown on the appendix which accompanied our prior report. A revised appendix is attached hereto.

Upon further consideration we are still of the opinion that the equity of the debtor's stockholders has no value and renew our finding to that effect. We are also still of the opinion that, under all pertinent facts and considerations, the probabilities of the property earning sufficient to pay dividends on any securities that could properly be represented by warrants issued under the plan are too remote to justify provision in the plan for such warrants, even though the warrants might provide that the securities be purchased at a stated cash consideration.

We would consider the designation of the new preferred stock as class A stock and the new common stock as class B stock, to conform with requirements of the New York Stock Exchange, to be substantial compliance with the provisions of the plan approved by us.

Part L(1) of our prior order provided that equipment-trust certificates of series A, C, D, E, F, G, H, J, K, and L, maturing between April 1, 1935, and December 31, 1940, and not fully paid, shall remain undisturbed as to lien and interest but the principal thereof shall be paid at the rate of 20 percent of each installment annually, in accordance with the arrangement now being followed by the bankruptcy trustees with the approval of the court. This provision appeared in the committee's plan and was not altered by the debtor in its suggested modifications of that plan. Section 77 specifically provides that its provisions shall not affect, among other things, the right of an owner of equipment to take possession of the equipment in compliance with the provisions of a lease or conditional sale contract, so that acceptance of the provision as approved by us would have to be obtained from the holders of all of the certificates affected by it, before the plan could be consummated.

Since the issuance of our prior report the trustees have filed with us, pursuant to approval by the court, an application in Finance Docket No. 12891 for authority to issue $5,000,000 of 1½-percent certificates of indebtedness for the purpose of refinancing the unpaid principal of matured equipment-trust certificates of these series, amounting to $5,283,400. The debtor's trustees will supply the $283,400 in cash. They will further supply the funds for paying $609,000 of certificates of series E, F, G, and H, maturing on July 1, 1940, $618,000 of series D maturing August 1, 1940, and $141,000 of series K maturing on November 1, 1940. After this there will remain $5,819,000 of

series E, F, G, H, J, K, and L certificates maturing in 1941, 1942, 1943, 1944, and 1945. The new proposal contemplates payment of these maturities upon the due date without deferment or extension. The plan approved by us provides for the assumption by the reorganized company of the executory contracts of the debtor and its trustees. It should be modified so as to permit the trustees to arrange, with the approval of the court, for payment in cash of all deferred or postponed maturities of principal and interest of certificates of series A, C, D, E, F, G, H, J, K, and L or the refinancing of such maturities.

Part L(1) of our prior order will be modified to read as follows:

(1) Each equipment-trust certificate of series A, C, D, E, F, G, H, J, K, and L, maturing between April 1, 1935, and December 31, 1940, and not fully paid shall remain undisturbed as to lien and interest, but unless other provision for refinancing such obligations be made by the trustees, with the approval of the court, prior to the consummation of the plan, the principal thereof shall be paid at the rate of 20 percent of each installment annually upon the due date, the balance to be paid serially at the rate of 20 percent per annum, all in accordance with the arrangement now being followed by the bankruptcy trustees, with the approval of the court. Equipment-trust certificates of series M and series N, and trustees' equipment-trust certificates of series O, P, Q, R, S, and T, and any other equipment-trust certificates which may be issued by the bankruptcy trustees before the consummation of the plan, together with any other obligations under equipment leases or sales agreements, are not affected by the plan and shall be assumed or paid by the new company when they respectively become due. The interests of the holders of equipment obligations other than holders of series A, C, D, E, F, G, H, J, K, and L, shall be deemed not to be adversely and materially affected by the plan and submission of the plan to such holders shall not be necessary. The issue of additional equipment obligations prior or subsequent to the consummation of the plan, if duly authorized under section 20a of the Interstate Commerce Act, shall not be prohibited.

Summary.

For the reasons stated we conclude that the plan of reorganization of the debtor approved on February 12, 1940, should be modified in the following respects, as more fully described above:

1. By placing the so-called discretionary payment to the additions and betterments fund after, rather than before, the application of available net income to the payment of contingent interest on the general-mortgage series-A bonds and the modified Terre Haute bonds;

2. By clarifying the provision regarding the application of funds in the reserve and retirement fund so that such application shall be specifically in the order of the purposes shown;

3. By providing that if any unappropriated balance remains in the reserve and retirement fund at the close of any calendar year, such balance or such portion thereof as will bring the appropriations for the year up to a total of $5,000,000 may be applied, at the discretion of the board of directors, to the retirement of any first mortgage bonds then outstanding; and in the event that the unappropriated balance at the end of any calendar year shall exceed $5,000,000, the excess over $5,000,000 shall be applicable mandatorily to the retirement of such bonds;

4. By providing that any unappropriated balance in the additions and betterments fund at the end of any calendar year shall be paid into the reserve and retirement fund;

5. By providing for a voting trust for 5 years for the new preferred and common stocks, to be administered by five voting trustees, one to be designated by the institutional investors' group committee, one by the mutual savings bank group, one by the Reconstruction Finance Corporation, one by the protective committee for the 50-year mortgage bonds, and one by the trustees of the debtor's convertible adjustment mortgage; with provision for the appointment of successor trustees as hereinbefore stated; the five members of the reorganization committee to be designated by the same interests in a similar manner; the provision of the plan specifying that the first board of directors shall be designated by the reorganization committee is eliminated;

6. By modifying the provision regarding the cumulative feature of the new general-mortgage income bonds so that interest owing as a debt in a given year, but which is paid on the interest payment date or dates in the succeeding year, shall not be included in calculating the 13½ percent accumulated interest;

7. By introducing a provision in each new mortgage that the alteration or modification thereof and of any supplements thereto may be made by the concurrent action of

the new company and the holders of not less than 66⅔ percent of the bonds outstanding, subject to our approval.

8. By introducing in the new general mortgage a provision that in the event of any unification of the debtor's properties and those of another company, the modifications of the mortgage under paragraph 7, above, may include provisions excluding the earnings from such other properties in determining available net income, and providing for the determination of such available net income without the maintenance of separate accounts;

9. By providing that during any period when voting rights are exercised exclusively by the holders of the preferred stock, such holders shall vote cumulatively as a class;

10. By modifying the allotment of securities to the holders of the Gary bonds so that new preferred stock shall be issued to such bondholders at $100 par value in respect of 75 percent of their total claim, including interest accrued to the effective date of the plan, and new common issued on the basis of $100 a share in respect of the remaining 25 percent of total claim.

11. By modifying the provision regarding the treatment of existing equipment obligations so as to permit the payment in cash of, or the refinancing of, matured certificates of series A, C, D, E, F, G, H, J, K, and L with the approval of the court, all other equipment obligations to remain undisturbed as to lien and interest and assumed or paid by the new company.

We find that, as thus modified, the plan will meet the requirements of section 77(b) and (e) of the Bankruptcy Act and will be compatible with the public interest.

As to all other requests, the petitions for modification of plan are denied. An appropriate order will be entered approving our former plan, as herein modified, and superseding our order of February 12, 1940.

Commissioners Miller, Patterson, and Johnson did not participate in the disposition of this proceeding.

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REVISED APPENDIX

C., M., St. P. & P. R. R. Co. Reorganization, F. D. 10882

Present Obligations and Stock				Approved Plan as modified						
	Principal Amount	Interest accrued to Dec. 31, 1938 and not authorized to be paid	Total	Undisturbed or Extended	First Mortgage Bonds	General Mortgage 4½% Bonds Series A	General Mortgage 4½% Bonds Series B convertible	5% Preferred Stock	Common Stock No-par Value shares	
					(4% interest except Terre Haute bonds)					
Equipment obligations	$33,322,999	$	$33,322,999	$33,322,999		$	$	$		
R. F. C. loans	12,920,463		12,920,463 (a)		(100%) $11,947,164					
Note to Cont. Ill. Nat. B'k. & Trust Company	1,184,000		1,184,000	1,184,000						
Terre Haute bonds:										
So. Ind. Ry. 4s, 1951	7,287,000		7,287,000		7,287,000					
Bedford Belt Ry. 5s, 1938	250,000		250,000		250,000					
T. H. first & ref. 5s, 1960	8,056,000		8,056,000		8,056,000	See Note				
T. H. income 5s, 1960	6,336,000		6,336,000		6,336,000					
Mil. & Nor. R. R. bonds:										
First mtg. 4½s, 1939	2,117,000	103,204	2,220,204		(70%) 1,554,443	(30%) 666,061				
Consol. mtg. 4½s, 1939	5,072,000	247,260	5,319,260		(25%) 1,329,815	(35%) 1,861,741	(20%) 1,063,852	(20%) 1,063,852		
General Mtg. bonds, 1989:										
Series A, 4s	48,241,000	5,653,090	53,894,090		(25%) 13,473,523	(35%) 18,862,931	(20%) 10,778,818	(20%) 10,778,818		
Series B, 3½s	8,950,000	920,211	9,870,211		2,467,553	3,454,574	1,974,042	1,974,042		
Series C, 4½s	42,597,000	5,652,191	48,249,191		12,062,208	16,887,217	9,649,838	9,649,838		
Series D, 4½s	24,000,000	3,217,320	27,217,320		6,804,330	9,526,062	5,443,464	5,443,464		
Series E, 4¾s	15,000,000	2,137,381	17,137,381		4,284,345	5,998,083	3,427,476	3,427,476		
50-yr mtg. 5s, 1975	106,395,096	20,835,706	127,230,802				(15%) 19,084,621	(60%) 76,338,481	(25%) 318,077	
Convert.—Adjust. mtg. 5s, 2008	182,873,693	79,550,055	262,423,748						1,749,492	
									39,163 (c)	
Gary first mtg. 5s, 1948	3,000,000	562,500	3,562,500					(75%) 2,671,875	(25%) 8,963¼	
				5,000,000	(Assumed amount of new money bonds issued in reorganization. Interest assumed at 4%)					
Unsecured claims (9/30/37)	445,162		445,162							
Total debt	508,047,413	118,878,918	626,926,331							
Preferred stock	149,307,300									
Common stock, no-par value	1,174,060 shs. (b)								15,837 (d)	
				No equity						
				No equity						
Totals, New Company	34,506,999			58,923,171	57,256,569	51,422,111	111,347,846		2,131,475¼	
Terre Haute				21,929,000	(See Note)					

Note: These items, strictly not a part of the capital structure of the new company, are included here since, under the plan, the new company will assume obligation with respect to principal and interest of the four classes of Terre Haute bonds, if the terms thereof are modified as provided in the plan. Such modification includes the provision that the bonds will bear fixed interest at the rate of 2.75 percent and contingent interest at the rate of 1.5 percent per annum.

(a) Reflecting repayment of $200,000 Jan. 3, 1939. Further reduced for purpose of the plan by crediting $973,299 cash in hands of first and refunding mtg. trustee Dec. 29, 1938, leaving $11,947,164 to be discharged by issue of new securities.

(b) Not including capital stock of the Terre Haute. Of such stock, 1,259 shares are not owned by the Milwaukee.

(c) Additional common stock assigned on basis of free assets.

(d) Other additional common stock issued on the basis of free assets; to be issued to holders of unsecured claims as provided in the plan.

SUMMARY

	Principal Amount	Annual Charges
Equipment obligations, to be assumed; maturities to be rearranged in part	$ 33,322,999	$ 1,286,000
Bank note, undisturbed	1,184,000	23,680
First Mtg. bonds of new company	58,923,171	2,356,927
New Terre Haute bonds, portion representing fixed interest	15,350,300	603,047
Total fixed int. debt	108,780,470	4,269,654
Adds.—Betts fund; mandatory payment		2,500,000
Gen. mtg. 4½% income bonds of new company	108,678,780	4,890,545
New Terre Haute bonds, portion representing contingent interest	6,578,700	328,935
Total system debt	224,037,950	
Sinking fund, approx.		543,394
Charges ahead of dividends		12,532,528
New 5% preferred stock	111,347,846	5,567,392
New no-par common stock, shown at $100 a share	213,147,525	
	548,533,321	

Percent of debt to total capitalization—40.8

553 And on, to wit, the 14th day of June, A. D. 1940, came the Interstate Commerce Commission by its attorneys and filed in the Clerk's office of said Court its certain Supplemental Order, entered June 4th, 1940, in words and figures following, to wit:

554 SUPPLEMENTAL ORDER.

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of June, A. D. 1940.

(Caption—10882)

Further investigation of the matters and things involved in this proceeding having been made, upon petitions filed requesting modification of the plan of reorganization approved February 12, 1940, and this Commission having, on the date hereof, made and filed a supplemental report containing its findings of fact and conclusions thereon, and a full statement of the reasons for its conclusions, which report is hereby referred to and made a part hereof:

It is ordered, That the following modified plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, debtor, be and it is hereby, approved:

A. The effective date of the plan shall be January 1, 1939, provided, however that the modification of the mortgages and the bonds of the Chicago, Terre Haute and Southeastern Railway Company, hereinafter referred to as the Terre Haute, and its subsidiaries, and the new lease of the Terre Haute property as hereinafter provided, shall be approximately as of the date of consummation of the plan.

B. The properties of the debtor shall be transferred to the reorganized debtor or to a new corporation organized for the purpose, in either case hereinafter referred to as the new company.

C. The capitalization of the new company at the consummation of the plan shall consist substantially of the equipment obligations oustanding, aggregating $33,022,999 on the basis described in the aforesaid report, and a bank loan of $1,184,000, both subject to final adjustment, $58,923,171 of first mortgage series A and new money

bonds, $57,256,669 of general mortgage 4½ percent bonds, series A, $51,422,111 of general mortgage 4½ percent convertible bonds, series B, $111,347,846 par value, of 5 percent preferred stock, and 2,131,475¼ shares of common stock, of no par value. In addition, there shall remain outstanding, in modified form as hereinafter provided, $21,929,000, principal amount, of bonds of the Terre Haute and its subsidiaries.

D. Upon consummation of the plan and the issue and distribution of new securities as hereinafter provided, the existing stocks of the debtor, together with all its mortgage bonds, including bonds pledged, shall be surrendered to the reorganization committee and cancelled and all existing mortgages shall be satisfied of record and cancelled.

E. The new first mortgage shall constitute a first lien, subject only to the lien of equipment obligations, on all property owned by the debtor or its trustees in bankruptcy as such, including securities; equipment, and the equity in such equipment as may be subject to equipment-trust obligations, but excluding equipment or the equity in equipment which may be now or hereafter lodged under the lien of any of the Terre Haute mortgages in accordance with the terms of such mortgages, modified as herein provided. The first mortgage shall also have a lien on all similar property acquired by the new company after
555 the reorganization, except equipment replacing deficiencies under the Terre Haute mortgages, and except that (a) if the new company shall acquire the properties of any other company (except a subsidiary) then constituting a class 1 carrier as defined by the rules of this Commission then in force, such properties shall not be subject to the lien of the first mortgage unless hereafter specifically subjected thereto or unless acquired in whole or in part by the use of first mortgage bonds or general mortgage income bonds, or moneys deposited under either of those mortgages, and (b) if the new company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a class 1 carrier as defined as aforesaid, properties then owned or thereafter acquired by such other company shall not be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien

of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part by the use of first mortgage bonds or general mortgage income bonds or moneys deposited under either of said mortgages.

The new first mortgage bonds shall be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the State or States in which the new company is incorporated. First mortgage bonds, other than those issued in the reorganization, may be issued from time to time in different series, subject to limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates, and containing such provisions in respect to redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds, as may be prescribed by the board of directors of the new company at the time of issue, and approved by this Commission.

There shall be issued in connection with the settlement of the claims of creditors, as hereinafter described, approximately $53,923,171, principal amount, of series A first mortgage bonds, to be dated January 1, 1939, and mature January 1, 1989, bearing interest at the rate of 4 percent per annum, payable semiannually July 1 and January 1. Such bonds shall be redeemable as a whole or in part on any interest payment date on 30 days' notice, and at any other time on 60 days' notice, both by publication, at par and accrued interest plus a premium of 5 percent if redeemed before January 1, 1940, and, if redeemed thereafter, at par and accrued interest, plus a premium of 5 percent, decreased by ¼ of 1 percent for each 2 years elapsed after January 1, 1940, until January 1, 1979, and thereafter at par and accrued interest.

In addition to the foregoing bonds to be issued for the settlement of the claims of creditors, there shall be issued in the reorganization for the purpose of sale to provide for reorganization expenses, working capital, and necessary additions and betterments, not exceeding $10,000,000, principal amount, of new first mortgage bonds, or such lesser amount as, with the approval of the reorganization committee, may be determined to be necessary having such maturity not earlier than January 1,

1959, and such rate of interest, not exceeding 5 percent per annum, and such other provisions, and be sold at such price and upon such terms and conditions as may be determined by the reorganization committee and approved by this Commission. The amount of bonds to be sold in connection with the consummation of the plan, and the application of the proceeds of the sale of such bonds,
556 shall be determined by the reorganization committee in its discretion.

First mortgage bonds, in addition to those issued in the reorganization, shall be issuable from time to time to refund outstanding first mortgage bonds or to refund obligations secured by prior liens on after-acquired property or to provide for or to reimburse the new company for not exceeding 75 percent of expenditures made after December 31, 1938, (including expenditures for new equipment subject to the lien of the first mortgage as a first lien, but not including other expenditures for equipment or for additions and betterments to equipment), which, under the accounting rules of this Commission at the time in force are properly chargeable to capital account; provided, however, that

(a) Except when bonds are authenticated in respect of new mileage (or securities representative thereof), or in respect of new equipment, said 75 percent shall be applied to the net amount of capital expenditures made after December 31, 1938, after deducting (to such extent and on such basis as may be provided in the first mortgage) credits to capital account after that date;

(b) If any new first mortgage bonds shall be issued for the acquisition of new equipment, a sinking fund shall be provided sufficient to retire an equivalent amount of such bonds within a period of either 15 years or the estimated life of the equipment to be acquired (as established by a certificate of an engineer who shall be appointed by the board of directors of the new company and approved by the trustee under the first mortgage and who may be an officer or employe of the new company), whichever may be the shorter; and

(c) If any property is acquired subject to existing liens the amount of additional first mortgage bonds issuable therefor, together with the aggregate amount of existing liens to which such property is subject, shall not exceed 75 percent of the net cost thereof, including as part of

such cost existing liens whether or not the indebtedness secured thereby is assumed by the new company;

(d) When the total principal amount of first mortgage bonds outstanding plus all other funded debt bearing fixed interest shall exceed either (a) 35 percent of the total capitalization of the new company, determined as hereinafter provided, or (b) 55 percent of such total capitalization, less the principal amount of funded debt bearing contingent interest at the time outstanding, the new company will pay to the trustee under the first mortgage as a sinking fund a sum equal to 50 percent of the available net income of the next preceding calendar year that remains after providing for all general mortgage sinking funds and charges prior thereto, as hereinafter described in connection with the application of available net income, or after said provisions shall have ceased to be operative, 50 percent of net income as defined by the accounting rules or practice referred to. Such sinking fund shall be applied to the retirement of first mortgage bonds, by purchase in the open market or by call for tenders or otherwise at not exceeding the redemption price (or in the case of bonds not redeemable, the principal amount and accrued interest) or by payment of matured or maturing bonds or redemption of redeemable bonds; all bonds so acquired shall be cancelled and no bonds may be issued under the first mortgage to refund any such bonds. First mortgage bonds and general mortgage income bonds outstanding shall be deemed to include all bonds authenticated and delivered which shall not have been cancelled or assured of retirement through the deposit of cash. Funded debt shall be deemed to
557 include an amount equal to the capitalized value, at 5 percent per annum, of fixed rents payable for leased roads, other than terminal or bridge properties, but shall not include (a) obligations (other than mortgage bonds or equipment trust obligations) maturing not more than two years after their date, or (b) obligations of longer maturity secured by pledge of bonds having a lien on property of the new company except to the extent, if any, by which the principal amount of such obligations exceeds the principal amount of such bonds so pledged. Bonds guaranteed by the new company as to interest or principal or both (other than bonds of a terminal or bridge company) shall be included in funded debt, but, in case of a joint and several guaranty with other corporations, only to the ex-

tent of the new company's basic proportion of the principal liability. There shall be included in determining total capitalization only (a) obligations constituting funded debt, (b) stock having par value, at such par value, and (c) stock without par value, at $100 a share in case of the stock issuable under the plan, and, in case of other stock, at the capital value at which such stock is carried on the books of the new company, not exceeding, however (except to the extent that earned surplus shall have been duly capitalized), the net amount received by the new company on the issue thereof; and

(e) No additional first mortgage bonds shall be sold or pledged unless the board of directors of the new company, by resolution adopted by two thirds of the entire number of directors, shall have authorized such sale or pledge, and the terms thereof.

The mortgage shall provide, within conditions and limits to be therein prescribed, for the alteration and modification thereof and of any or all supplements thereto and of the rights and obligations of the new company and of the holders of the bonds thereunder at any time by the concurrent action of the new company and of the holders of not less than 66⅔ percent in aggregate principal amount of the bonds then outstanding affected by such change or modification; provided, that no such change or modification shall alter or impair the obligation of the new company to pay the principal of any bond or the interest thereon without the consent of the holder of such bond, and provided, further, that all changes or modifications shall be subject to the approval of this Commission.

The new first mortgage shall contain a covenant substantially to the effect that, during each calendar year, commencing January 1, 1939, or on or before March 1 next following the end of such calendar year, there will be paid into a reserve and retirement fund (a) such amounts as may be charged against operating expenses by the new company in respect of such calendar year as this Commission may require for depreciation of equipment, or, if no specific depreciation shall have been required, then a reasonable amount therefor within the maximum permitted by this Commission and (b) such amounts as may be required to be paid into the reserve and retirement fund out of the additions and betterments fund, as hereinafter provided.

The reserve and retirement fund may be used only to provide for or reimburse the new company for expenditures for the following purposes in the order shown:

(a) Payment of principal of equipment trust obligations and sinking funds on bonds issued against the purchase of equipment; and

if at any time the amount then in said fund, and estimated to be payable into said fund in respect of the remainder of the then current calendar year, shall exceed the principal of such equipment trust obligations and sinking funds required to be provided for out of said fund in respect of the remainder of said calendar year, then to the extent of such excess;

558 (b) Payment in cash on account of the cost of new equipment;

(c) Cost of replacement of vacancies in equipment trusts;

(d) Cost of replacement of property retired to the extent chargeable to capital account;

(e) Additions and betterments to equipment chargeable to capital account required to maintain the efficiency of the system unimpaired; and

if the amount of the above mentioned excess of said fund shall at any time be more than $5,000,000, then to the extent of such excess over $5,000,000;

(f) Any other capital expenditure for which first mortgage bonds might be issued.

Should an emergency exist resulting in insufficient earnings from which to meet interest or any sinking fund payments on the first mortgage bonds, or on any other secured obligations the lien of which is not junior to the lien of the first mortgage bonds, the board of directors may, in its discretion, apply any amounts in said fund to the extent necessary to make good the deficiencies, but thereafter no interest upon the general mortgage income bonds or dividends on stock shall be paid until the reserve and retirement fund has been reimbursed for the funds so used.

The reserve and retirement fund shall be segregated from the general funds of the new company and held in cash or invested in United States Government securities. If, after the final computation of the amount required to be paid into said fund in respect of any calendar year, and the amount appropriated or to be appropriated there-

from in respect of expenditures made during such calendar year for the purposes described under (a) to (f) above, there shall remain an unappropriated balance, such balance or such portion thereof as will bring the appropriations for the year up to a total of $5,000,000 may be applied, at the discretion of the board of directors, to the retirement, by purchase or redemption, of any first-mortgage bonds of the new company then outstanding. In the event the unappropriated balance of the fund at the end of any calendar year shall exceed $5,000,000, the excess over $5,000,000 shall be applicable mandatorily to the purchase or redemption of such first-mortgage bonds.

To the extent that any expenditures are provided for or reimbursed out of the reserve and retirement fund, the new company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking, as to either assets or dividends, in priority to, or on a parity with, the preferred stock, to capitalize or reimburse such expenditures; provided, however, that, subject to the foregoing restriction, such expenditures (if for purposes for which first mortgage bonds or general mortgage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage income bonds may be issued.

The new first mortgage shall also contain a covenant to the effect that the principal amount of either first mortgage bonds or general income bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

F. The new general mortgage shall constitute a lien, subject to the lien of the first mortgage, upon all property from time to time subject to the lien of the first mortgage. Bonds issued under the general mortgage shall be unlimited in authorized principal amount, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the state or states in which the new company is incorporated.

General mortgage income bonds may be issued from
559 time to time in different series, subject to the limitations and restrictions specified in the mortgage, payable on such date or dates, in such denominations, bearing interest at such rates and containing such provisions in

regard to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, sinking funds and priority as among the several series of interest and sinking fund, as may be prescribed by the board of directors of the new company at the time of issue, and approved by this Commission.

There shall be issued in connection with the reorganization and for the purposes hereinafter stated, approximately $57,256,669, principal amount, of series A general mortgage income bonds, to be dated January 1, 1939, and to mature January 1, 2014, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent, whether for consecutive or nonconsecutive periods, as hereinafter defined, but in priority to interest on the series B bonds, payable on the first day of April, commencing April 1, 1940. Interest owing as a debt in a given year but which is paid on the interest payment date or dates in the succeeding year shall not be included in calculating the 13½ percent.

There shall also be issued in connection with the reorganization for the purposes hereinafter stated approximately $51,422,111, principal amount, of general mortgage series B convertible income bonds, to be dated January 1, 1939, and to mature January 1, 2039, bearing interest contingent upon earnings at the rate of 4½ percent per annum, cumulative to the maximum amount at any one time of 13½ percent, whether for consecutive or nonconsecutive income periods as hereinabve defined, but in subordination to interest on the series A bonds, payable on the first day of April, commencing April 1, 1940. Interest owing as a debt in a given year but which is paid on the interest payment date or dates in the succeeding year shall not be included in calculating the 13½ percent.

Interest on general mortgage income bonds shall be paid, together with any accumulations thereof, only out of available net income of the new company as hereinafter provided, with such priority as among the several series as may be determined by the board of directors of the new company at the time of the creation of such series, provided, however, that the interest on any new series shall not have priority over Series A or Series B. Accumulations of interest shall not bear interest. Upon

the happening of any event or default provided in the mortgage, and institution with the approval of any court or public regulatory body having jurisdiction in the premises of a proceeding seeking reorganization of the new company, or the appointment of a trustee or receiver for all or any substantial part of its property, all arrears of accumulated interest shall become immediately due and payable.

No interest shall be paid on the general mortgage income bonds if the amount so paid would be less than ¼ of 1 percent, and all payments shall be in multiples of ¼ of 1 percent. Any such excess available for interest not paid because of the foregoing provisions shall be reserved and added to the amount available for such interest in the succeeding income period for the payment of such interest.

The series B convertible income bonds shall be convertible into the common stock of the new company at the option of the holders at any time (but, in the case of said bonds called for redemption, only up to and including the day which shall be 30 days prior to the redemption date, or, if, such day 560 shall be a holiday the first business day thereafter) at the rate, for each $1,000 bonds, of 10 shares of common stock, with appropriate provisions for adjustment of interest and dividends and in the event of stock dividends or split-ups or in the event of accumulation of shares.

The series A and series B income bonds shall be redeemable for the sinking fund at any time on 60 days' notice at the face value thereof, plus accrued and unpaid accumulations of interest; and otherwise as a whole or in part on any interest payment date on 60 days' notice and at any other time on 90 days' notice at 101 per cent of the face value thereof if redeemed on or before January 1, 2014, and thereafter at face value plus accrued and unpaid accumulations of interest to the extent accumulations are authorized.

The general mortgage income bonds of series A and series B shall be entitled to the benefit of a sinking fund to be created by the annual payment to the mortgage trustee on April 1 of each year, out of available net income as hereinafter defined, of an amount equal to ½ of 1 per cent of the aggregate principal amount of general mortgage income bonds, series A and series B, authenticated and delivered. The sinking fund shall be applied from time to time to the purchase, at not exceeding their principal amount, or, if not

obtainable, to the redemption, of general mortgage income bonds, series A, so long as any of the bonds of said series shall be outstanding, and thereafter of general mortgage income bonds, series B, and all bonds so purchased and redeemed shall be canceled. Sinking funds may be provided for general mortgage income bonds of any other series as may be determined by the board of directors of the new company, with such priority as between such series as the board may decide, provided none of such series shall have priority over series A or series B.

General mortgage income bonds, in addition to those issued in the reorganization may be issued from time to time in lieu of first mortgage bonds, for the purposes and subject to the restrictions stated for the issue of additional first mortgage bonds. The general mortgage shall contain a covenant substantially to the effect that no general mortgage income bonds (other than those to be issued under the plan) shall be sold or pledged (except to refund outstanding first mortgage bonds or income bonds or underlying obligations) unless the board of directors of the new company, by resolutions adopted by two-thirds of the entire number of directors, shall have authorized such sale or pledge.

The mortgage shall provide, within conditions and limits to be therein prescribed, for the alteration and modification thereof and of any or all supplements thereto and of the rights and obligations of the new company and of the holders of the bonds thereunder at any time by the concurrent action of the new company and of the holders of not less that 66⅔ percent in aggregate principal amount of the bonds then outstanding affected by such change or modification; provided, that no such change or modification shall alter or impair the obligation of the new company to pay the principal of any bond or the interest thereon without the consent of the holder of such bond, and provided, further, that all changes or modifications shall be subject to the approval of this Commission.

In the event of any unification of the properties of the new company with the properties of any other company, the modifications thus authorized may include provisions excluding, in whole or in part, the earnings from such other properties in determining available net income, and providing for the determination of such available net income without the maintenance of separate accounts.

561 The general mortgage shall contain covenants similar to those in the first mortgage in respect of the reserve and retirement fund.

The general mortgage shall also contain a covenant to the effect that the principal amount of either first mortgage bonds or general mortgage bonds pledged to secure any indebtedness shall never exceed 150 percent of the principal amount of such indebtedness.

G. The mortgage indentures securing the first mortgage bonds of the Southern Indiana Railway Company, the first mortgage bonds of the Bedford Belt Railway Company, the first and refunding mortgage bonds of the Terre Haute, and the income mortgage bonds of the Terre Haute shall be modified by supplemental indentures and the existing bonds correspondingly modified, without disturbing their liens, or new bonds issued in exchange for the existing bonds, in either case effective approximately as of the date of consummation of the plan, so that (1) the maturity of all such bonds shall be the date of maturity of the first mortgage series-A bonds of the new company, (2) all such bonds shall bear fixed interest at the rate of 2.75 percent per annum and contingent interest in addition at the rate of 1.5 percent per annum, the payment of the latter being contingent upon the earnings of the new company to the same extent, in the same manner, and with the same limitations, as is provided for the payment of interest on the general mortgage series-A income bonds of the new company, as hereinafter described, (3) the holders of the aforesaid bonds shall waive all equipment vacancies under the existing mortgages up to the effective date of the plan, January 1, 1939, (4) the new company may, in the replacement of equipment retired after the effective date of the plan, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 percent of the total cost of the equipment, and (5) the mortgages contain appropriate provisions permitting, subject to the approval of this Commission, abandonment of Terre Haute property which the board of directors may deem it to the interests of the system to abandon. The supplemental indenture for the Terre Haute income mortgage shall declare null and void the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the income bonds. A new lease shall be made between the Terre Haute and the new company which shall replace the present lease between the

Terre Haute and the debtor. The new lease shall provide for the assumption by the new company of the payment of the principal amounts of the mortgage bonds, modified as above provided, and for the payment by the new company of the interest on the modified bonds at the rates and under the conditions specified in the modified bonds, in addition to an amount not exceeding $12,000 a year, to pay the taxes and corporate expenses of the Terre Haute. The lease shall permit, subject to the approval of this Commission, the abandonment of property which the board of directors may deem to the advantage of the system to abandon, and shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company.

The foregoing provisions of the plan, if accepted by substantially all the Terre Haute bondholders, shall become effective approximately as of the consummation of the plan. The reorganization committee (hereinafter provided for), upon confirmation of the plan by the court, shall submit the foregoing provisions, with copies of this report and order, to all the Terre Haute bondholders, and shall report to the court the result of such submission. Should the court determine that the foregoing provisions relative to the treatment of the Terre Haute bonds and the Terre Haute lease shall not have been accepted by substantially all the Terre
562 Haute bondholders, then the existing lease between the Terre Haute and the debtor, together with the guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds, shall be rejected, in so far as the plan herein approved is concerned, as of the date of such determination by the court, without prejudice to either the negotiation of a new lease or a consolidation of the properties of the Terre Haute with those of the new company, on terms subject to the approval of this Commission. In the event the court determines that the described provisions have not been so accepted, appropriate adjustment shall be made by the court in the corporate structure of the new company, approved herein, by elimination of the assumption of obligation with respect to the Terre Haute bonds, and such other adjustments as the court may deem necessary to put the plan into effect.

H. The available net income shall be determined for each calendar year (herein called income period), commencing January 1, 1939 as promptly as possible after the ter-

mination thereof, by deducting from the consolidated income of the new company and its railroad subsidiaries available for fixed charges for such income period (determined in accordance with the accounting rules of this Commission or those of any other public regulatory body having jurisdiction in the premises at the time in force, or to the extent not covered by such accounting rules, in accordance with sound accounting practice):

(a) All fixed charges accrued during such income period; and

(b) All other charges properly deductible from such income in determining income after fixed charges under such accounting rules then in force, but excluding contingent interest* and additions and betterments fund and sinking fund requirements hereinafter provided for;

Provided, however, that if the new company shall now come into ownership and possession of the properties now operated by the bankruptcy trustees of the debtor on or before the effective date of the plan, the available net income for any period after the effective date of the plan, until the new company comes into possession and operation of such properties, shall be computed as if the new company had come into such ownership or possession on said date, and had issued, as of that date, the new securities issuable under the plan, except that the present Terre Haute bonds shall be considered as undisturbed until the date of issue of the modified or new bonds issued under the supplemental indentures.

The available net income for each income period shall be applied to the following purposes and in the following order:

(1) The available net income shall first be applied, on April 1 of each year, beginning 1940, to the creation of a fund to provide for, or to reimburse the treasury of the new company for, all the cost, payable in cash, of additions and betterments to the mortgaged property, including equipment, which are properly chargeable to capital account under the accounting rules of this Commission then in force, provided, however, that

(a) To the extent that expenditures are so pro-

* Contingent interest on the modified Terre Haute bonds shall also be excluded for the purpose of this determination although such interest shall be shown in the accounts as rent for leased roads.

vided for or reimbursed out of the additions and betterments fund, the new company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or any stock ranking; as to either assets or dividends, in priority to, or on a parity with, the new preferred stock, to capitalize or reimburse such expenditures; provided, however, that, subject to the foregoing restriction, such expenditures (if for pur-
563 poses for which first mortgage bonds or general mortgage income bonds may be issued) may be taken into account in determining the total amount of capital expenditures in respect of 75 percent of which first mortgage bonds or general mortgage income bonds may be issued;

(b) The amount set aside in the additions and betterments fund out of available net income of any income period (A) shall not be less than $2,500,000 or such portion of that sum as may be available, plus the amount, if any, by which the amount applied to the fund out of available net income in the last preceding income period was less than $2,500,000 (such deficiency payments not to apply to any prior income period except the one immediately preceding), (B) plus such additional amount as the board of directors shall determine to set aside for the fund out of available net income for the income period, provided that the total amount so set aside for the income period under clauses (A) and (B) hereof shall not exceed $5,000,000, or 4 percent of railway operating revenues, whichever amount is greater, less any amount applied out of the reserve and retirement fund for the income period for capital expenditures other than payments of equipment obligations and payments on account of new equipment; and provided further, that such additional payment determined by the board of directors under clause (B) of this section shall be made only out of the available net income remaining after the payment of the full contingent interest on the general mortgage series A bonds of the new company and the modified Terre Haute bonds, as hereinafter provided.

If the new company shall establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for its roadway and structures, then the additions and

betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor. If, likewise, the new company shall charge to operating expenses in any year the cost of any additions and betterments, properly chargeable to capital account under the rules now in effect, then the amount of such charges shall be credited to the additions and betterments fund as a reduction of the payment into the fund for that year.

(c) The additions and betterments fund shall be segregated from the general funds of the new company and held in cash or invested in United States Government securities; and

(d) If an unappropriated balance shall remain in the additions and betterments fund at the end of any calendar year, after the final determination of the amount to be paid into such fund and the amount appropriated or to be appropriated in respect of expenditures during such calendar year, such unappropriated balance shall be paid into the reserve and retirement fund hereinbefore provided for and become subject to the provisions for that fund.

(2) Any then remaining available net income shall be applied to the extent, if any, by which the new company shall have failed to earn its fixed charges in the last preceding income period, to reimburse the treasury of the new company for any amount expended in paying fixed charges for such income period in excess of the net income available for interest for such income period.

(3) Any then remaining available net income shall be applied to the sinking funds elsewhere provided in the 564 plan for the retirement of first-mortgage or general-mortgage bonds, if any, issued for the acquisition of equipment free of other liens.

(4) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new company's general-mortgage income bonds of series A, and any accumulation thereof, together with the contingent interest on the four issues of Terre Haute Bonds, (which shall rank with the general-mortgage series A bonds of the new com-

pany), up to the limiting rate of 15 percent per annum fixed in the supplemental indentures, and any accumulation thereof; all such contingent interest payments being in multiples of ¼ of 1 percent. In periods when the available net income is not sufficient to enable the new company to pay the full rate on the series A bonds the ratio of the rate actually paid to the rate of 4½ percent shall be applied to the 15-percent rate on the new Terre Haute bonds in determining the amount of the contingent interest payment on the latter bonds, so that the Terre Haute bondholders of each class shall receive the same proportion of the contingent interest payment due on their bonds as will the debtor's creditors who receive the general mortgage series A bonds.

(5) Any then remaining available net income after payment of the full amount of interest due on the general mortgage series A bonds and the modified Terre Haute bonds, shall be applied to the additions and betterments fund to the extent that the board of directors shall authorize a payment thereto in addition to the mandatory payment of not less than $2,500,000, all as provided above in connection with the additions and betterments fund.

(6) Any then remaining available net income shall be applied to the payment on April 1 of each year, commencing 1940, of the contingent interest on the new general mortgage bonds of series B and any accumulation thereof; and if the available net income exceeds the interest requirement of such series B bonds, then to the payment of contingent interest on any later series which may be issued and outstanding, with such priority as between the several later series as may be provided in the bonds of such series. If interest is payable for any income period on general mortgage income bonds of series later than series A and series B, bearing interest at different rates but without priority as to payment as between each other, and the available net income applicable thereto shall be insufficient to pay all unpaid interest for such income period, including accumulations, the amount applicable shall be apportioned among the several series in proportion to the unpaid interest for such income period (excluding accumulations) on the bonds of the several series, respectively.

(7) Any then remaining net available income shall be applied to the payment of the sinking funds provided for the several series of the general mortgage income bonds at

the time outstanding; with such priority, as between the sinking funds provided for the several series, and otherwise at the times and upon such terms, as may be provided in such bonds;

(8) Any then remaining available net income shall be applied to payment to the sinking fund to be created and paid to the trustee under the first mortgage in the event the principal amount of first-mortgage bonds outstanding, plus all other funded debt bearing fixed interest, shall exceed either (a) 35 percent of the total capitalization of the new company, determined as elsewhere provided in the plan, or (b) 55 percent of such total capitalization, less the principal amount of funded debt bearing contingent interest at the time outstanding.

(9) Any then remaining available net income may be applied, as the board of directors of the new company
565 may determine, to dividends on the several classes of stock in the order of their priority, or to general corporate purposes.

I. The new preferred stock shall be authorized in unlimited amount subject to the laws of the State or States in which the new company is incorporated. Approximately 1,113,478 shares of preferred stock, series A, having a par value of $100 each, shall be issued in the reorganization. Other series may be later issued under the limitations and restrictions specified in the certificate of incorporation of the new company, with dividends at such rates and to contain such provisions in regard to accumulation of dividends, voting power, priority or liquidation, redemption, conversion, value (par or no par), retirement funds, participation, etc., as may be prescribed by the board of directors of the new company at the time of creation of the series, and approved by this Commission. So long as any shares of series A stock shall remain outstanding, the consent of the holders of at least two-thirds in number of shares of series A stock, then outstanding, given in writing or by resolutions adopted at a meeting, shall be necessary for effecting the issue of any additional shares of preferred stock ranking, either as to dividends or as to distribution upon liquidation, in priority to or on a parity with the preferred stock of series A.

The holders of series A preferred stock shall be entitled to receive, in respect of any income period, dividends at the rate of 5 percent per annum payable, but only as and

when declared by the board of directors of the new company, out of the available net income of the new company as defined above. Such dividends shall be noncumulative, whether or not earned, but no dividends shall be paid on the new common stock unless and until there shall have been paid, or declared and funds set apart for payment, on the series A preferred stock, dividends at the rate of 5 percent per annum in respect of the three consecutive income periods immediately preceding the date of payment on the common stock. After dividends shall have been paid or declared or funds set apart for payment on the common stock at the rate of $3.50 a share in respect of any one income period, each share of series A preferred stock will be entitled to participate equally with each share of common stock in any additional dividends paid or declared or set apart for payment to the extent of $1 a share in respect of such income period.

The series A preferred stock shall be redeemable, at the option of the new company, in whole or in part at any time on 30 days' notice by publication, at its par value, together with any unpaid dividends that shall have been declared thereon.

In the event of the dissolution, winding up, or liquidation of the new company, the holders of series A preferred stock shall be entitled to receive out of the assets of the new company; the par value of their shares with all dividends that shall have been declared thereon, before any distribution shall be made to the holders of the common stock, but shall not be entitled to share in any assets of the new company thereafter remaining.

The holders of preferred stock, series A, shall be entitled to voting power on all matters in respect of which stockholders of any class shall be entitled to vote, and shall further be entitled, voting cumulatively as a class, to elect a majority of the board of directors of the new company until full 5-percent dividends shall have been paid upon the preferred stock, series A, for three consecutive calendar years. Thereafter, each share of preferred stock, series A, shall be entitled to vote equally with each share of common stock upon the election of directors, by cumulative voting, until such time as full dividends on the preferred stock, series A, shall not have been paid during
566 three consecutive calendar years, in which event the holders of the preferred stock, series A, shall again

become entitled to elect a majority of the board of directors and to retain this right until full dividends shall have again been paid for three consecutive calender years, when equal voting rights for both classes of stock shall be resumed.

J. The new common stock shall be unlimited in authorized amount, subject to such limitations, if any, as may be provided in the charter or by the laws of the State or States in which the new company is incorporated. The new common stock shall be without par value. For the purposes of the reorganization approximately 2,076,475 shares shall be authorized and issued for allotment to secured creditors in the initial distribution, and not exceeding 55,000 additional shares shall be authorized and issued for distribution to the holders of general unsecured claims and the holders of the debtor's adjustment mortgage bonds, all as hereinafter provided. Approximately 514,221 additional shares shall be authorized and held in reserve for the conversion of the series-B general mortgage bonds on the basis stated in the description of that mortgage. Additional common stock may be issued only with the approval of this Commission in further proceedings. Each share of new common stock shall be entitled to one vote.

K. The new securities may be issued in temporary form in the first instance or interim certificates may be issued therefor. Scrip may be issued and distributed in lieu of fractions of a share of stock or of bonds. Such scrip may be non-interest bearing or non-dividend bearing, but will be exchangeable for new securities (or interim certificates therefor) when presented in proper multiples on terms and conditions determined by the board of directors of the new company. Accrued interest upon the existing securities has been calculated as of December 31, 1938, and in most cases results in odd amounts which would involve the delivery of scrip representing small fractions. Such adjustment of these interest amounts as may be necessary to avoid the issuance of scrip in too small fractions may be made by the reorganization committee or the reorganized company in its discretion.

L. The treatment of claims and the provision for cash financing under the plan shall be as follows:

(1) Each equipment-trust certificate of series A, C, D, E, F, G, H, J, K, and L, maturing between April 1, 1935, and December 31, 1940, and not fully paid shall remain undisturbed as to lien and interest, but unless other

provisions for refinancing such obligations be made by the trustees, with the approval of the court, prior to the consummation of the plan, the principal thereof shall be paid at the rate of 20 percent of each installment annually upon the due date, the balance to be paid serially at the rate of 20 percent per annum, all in accordance with the arrangement now being followed by the bankruptcy trustees, with the approval of the court. Equipment-trust certificates of series M and series N, and trustees' equipment-trust certificates of series O, P, Q, R, S, and T, and any other equipment-trust certificates which may be issued by the bankruptcy trustees before the consummation of the plan, together with any other obligations under equipment leases or sales agreements, are not affected by the plan and shall be assumed or paid by the new company when they respectively become due. The interests of the holders of equipment obligations other than holders of series A, C, D, E, F, G, H, J, K, and L, shall be deemed not to be adversely and materially affected by the plan and submission of the plan to such holders shall not be necessary. The issue of additional equipment obligations prior or subsequent to the consummation of the plan, if duly authorized under section 20a of the Interstate Commerce Act, shall not be prohibited.

567 (2) There shall be applied in reduction of the debtor's notes to the Reconstruction Finance Corporation all the cash in the hands of the trustee of the first and refunding mortgage at the time of consummation of the plan. In payment of the balance then due, including unpaid interest, if any, the Reconstruction Finance Corporation shall receive the first mortgage, 4 percent, series A bonds of the new company equal in principal amount to 100 percent of such balance. The securities pledged with the Reconstruction Finance Corporation shall be delivered to the reorganization committee.

(3) The terms and conditions of the four classes of Terre Haute bonds shall be modified and a new lease of the Terre Haute properties shall be executed upon the agreement by substantially all the Terre Haute bondholders to accept the provisions of the plan affecting their interests, all in the manner and under the conditions described above under G.

(4) The holders of Milwaukee & Northern Railroad Company first mortgage 4½ percent bonds shall receive for

each $1,000 bond and all unpaid interest thereon (the total amount of unpaid interest on bonds outstanding being considered to be $103,204, as of the effective date of the plan) approximately $734.12 of new first mortgage 4-percent bonds, series A, and $314.62 of new general mortgage 4½ percent bonds, series A.

(5) The holders of Milwaukee & Northern Railroad Company consolidated mortgage [illegible] percent bonds shall receive for each $1,000 bonds and all unpaid interest thereon (the total amount of unpaid interest on bonds outstanding being considered to be $247,260, as of the effective date of the plan) approximately $262.19 of new first mortgage 4 percent bonds, series A, $367.06 of new general mortgage 4½ percent bonds, series A, $209.75 of new general mortgage 4½ percent bonds, series B, and $209.75, par value, of new 5 percent preferred stock.

(6) The holders of the several series of the debtor's general mortgage bonds, due 1989, shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, the following securities, respectively: Series A, approximately $279.30 of new first mortgage 4 percent series A bonds, $391.01 of new general mortgage 4½ percent series A bonds, $223.44 of new general mortgage 4½ percent series B bonds, and $223.44, par value, of new 5 percent preferred stock; Series B, approximately $275.70 of new first mortgage 4 percent series A bonds, $385.99 of new general mortgage 4½ percent series A bonds, $220.56 of new general mortgage 4½ percent series B bonds, and $220.56, par value, of new 5 percent preferred stock; series C, approximately $283.17 of new first mortgage 4 percent series A bonds, $396.44 of new general mortgage 4½ percent series A bonds, $226.54 new general mortgage 4½ percent series B bonds, and $226.54, par value, of new 5 percent preferred stock, series D, approximately $283.51 of new first mortgage 4 percent series A bonds, $396.92 of new general mortgage 4½ percent series A bonds, $226.81 of new general mortgage 4½ percent series B bonds and $226.81, par value, of new 5 percent preferred stock; series E, approximately $285.62 of new first mortgage 4 percent series A bonds, $399.87 of new general mortgage 4½ percent series A bonds, $228.50 of new general mortgage 4½ percent series B bonds, and $228.50, par value, of new 5 percent preferred stock.

(7) The holders of the debtor's 50-year mortgage 5

percent bonds shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately $179.38 of the new general mortgage 4½ percent series B bonds, $717.50, par value, of new 5 568 percent preferred stock, and 2.99 shares of new no-par common stock.

(8) The holders of the debtor's convertible adjustment mortgage 5-percent bonds shall receive, for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately 9.78 shares of new no-par common stock, such allotment including provision for a share in the debtor's free assets.

(9) The holders of the first mortgage 5-percent bonds of the Chicago, Milwaukee & Gary Railway Company shall receive for each $1,000 bond and all unpaid interest thereon, as of the effective date of the plan, approximately 8.9 shares of new preferred stock and 2.97 shares of new common stock.

(10) The block of 55,000 shares of new common stock, herein provided for distribution in respect of claims upon the free or unpledged assets of the debtor, shall be distributed on the following bases:

(a) To the holders of the adjustment mortgage bonds, in recognition of the portion of their claim not satisfied from the proceeds of the mortgaged assets, there shall be assigned 39,163 shares of common stock, which is on the basis of approximately 0.7 share of stock to each $1,000 of claim.

(b) To all other unsecured claims, not entitled to priority over existing mortgages, there shall be assigned shares of common stock on the basis of 0.7 share for each $1,000 of claim allowed by the court; and

(c) In the event there shall then remain any substantial number of shares, out of the aforesaid block of 55,000 shares, such remaining shares shall be distributed pro rata among the holders of the adjustment mortgage bonds and the unsecured claims.

(11) The equity of the holders of the debtor's preferred stock and common stock having been found to be of no value, such stockholders shall not be entitled to participate in the plan.

(12) Cash requirements in connection with the reorganization shall be for the purpose of providing necessary additions and betterments and working capital, and for

payment of the expenses of reorganization. For such purpose there shall be issued in the reorganization not exceeding $10,000,000, principal amount, of new first mortgage bonds (or such lesser amount as, with the approval of the reorganization committee, may be determined to be necessary), having such maturity, not earlier than January 1, 1959, and such rate of interest, not exceeding 5 percent per annum, and such other provisions, and to be sold at such price and upon such terms and conditions as may be determined by the reorganization committee and approved by this Commission.

(13) The new company shall pay in cash any interest coupons on the debtor's bonds which were declared payable but had not been paid prior to July 1, 1935, and any interest coupons payable subsequent to that date and prior to the date of consummation of the plan, under orders of the court, if and when such coupons are presented by the holders thereof.

(14) The amounts of the obligations herein shown as of the effective date of the plan are subject to change, such as by the payment of equipment obligations, repayment on loans, and payment of bond interest due prior to January 1, 1939. The reorganization committee shall be authorized, in order to give effect to such changes, to make such adjustments in the claims provided for in the plan, and such changes in allotment of securities, consistent with the provisions of the plan, as may be approved by the court.

M. All taxes levied, assessed or accrued against the debtor or the trustees of its property by the United States and remaining unpaid at the date of consummation of the plan, shall be paid in cash or assumed and paid by the
569 reorganized company, without requiring proof thereof in this proceeding and without prejudice by reason of not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor, subject to the statutes of limitations normally applicable to the assessment and collection of such taxes, provided that the liability of the new company for any such taxes which are the subject of litigation on the date of the consummation of the plan or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statute of limitations shall be determined pursuant to law, and provided further that this provision shall not be deemed to preclude either

the debtor, the trustees of its property, or the new company from contesting the merits of any such tax in the manner provided by law.

The new company shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan, and the new company shall also assume any executory contracts made by the trustees, with the approval or authorization of the court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceeding.

Claims against the debtor entitled to priority over their respective mortgages, claims for taxes levied, assessed, or accrued against the debtor or its trustees, current liabilities and obligations incurred by the trustees during the reorganization proceedings, to the extent unpaid at the date of consummation of the plan, and claims arising from the disaffirmance of executory leases or contracts by the trustees pursuant to orders of the court, in respect of which claims are filed or evidenced in accordance with orders of the court, shall be assumed by the new company and paid in the usual course of business with the same relative priority as they now have with respect to other obligations of the debtor. When so treated, we find that such claims against the debtor, and the interests of parties to executory contracts with the debtor assumed by the new company, other than the obligations of the debtor's trustees, are not adversely and materially affected by the plan.

N. The plan shall be carried out under the supervision of a reorganization committee consisting of five members, one to be designated by the institutional investors group committee, one by the mutual savings bank group, one by the Reconstruction Finance Corporation, one by the protective committee for the 50-year mortgage bonds, and one by the trustee of the debtor's convertible adjustment mortgage. Should any of the parties named fail to designate its representative within such time as the court shall consider reasonable, the court shall appoint such representative. The member designated by the Reconstruction Finance Corporation shall be succeeded by one designated

by the joint action of the institutional investors' group committee and the mutual savings bank group, when and if the Reconstruction Finance Corporation shall cease to be a creditor of the company before the termination of the voting trust. Otherwise the right to designate a member shall include the right of the same interest to designate a successor. The reorganization committee shall determine the method of carrying out the plan, subject to approval by the court, and the form, except as herein otherwise expressly provided, and the provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carry-
570 ing out the plan. The organization committee shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation pursuant to section 77(p) of the Bankruptcy Act, as amended.

The board of directors of the new company shall consist of not less than seven nor more than fifteen members who shall be elected by the stockholders in the manner described in connection with the voting rights of the new stock.

A voting trust shall be created into which all the preferred stock and common stock of the new company shall be placed and voting trust certificates shall be issued therefor. The voting trustees shall be five in number, one designated by the institutional investors' group committee, one by the mutual savings bank group, one by the Reconstruction Finance Corporation, one by the protective committee for the 50-year mortgage bonds, and one by the trustee of the debtor's adjustment mortgage. The trustee designated by the Reconstruction Finance Corporation shall be succeeded by one designated by the joint action of the institutional investors group committee and the mutual savings bank committee, when and if the Reconstruction Finance Corporation shall cease to be a creditor of the company before the termination of the trust. Otherwise the right to designate a trustee shall include the right of the same interest to designate a successor trustee. The reasonable expenses of the voting trustees, including counsel fees, shall be paid by the new company. The voting trust shall continue until five years from the date that the plan is confirmed by the court or until such earlier time as dividends on the new preferred stock shall

have been paid at the full rate of 5 per cent for each of three consecutive periods of 12 months.

The new company shall, by-law or otherwise, create a finance committee of not less than three nor more than five members of its board of directors, which committee shall have supervision over all financial matters, including the annual budget of capital expenditures, and all other expenditures of the new company's funds, and the new company shall covenant to make only such expenditures as shall be approved by said finance committee and authorized by the board of directors, exclusive of emergency expenditures, and of capital items not exceeding $25,000 for any item and not exceeding $200,000 in the aggregate in any year.

O. The plan shall be carried out either by vesting the properties of the debtor, together with the property held by the trustees, in the reorganized debtor corporation or in a new corporation created for the purpose of this reorganization, and by execution by the reorganized or new company of the new mortgages and the issue by it of the new securities contemplated under the plan. The reorganized or new company shall be deemed to have come into possession of the properties as of the effective date of the plan, January 1, 1939.

P. If so ordered by the court, the plan, after it shall be found fair and equitable and confirmed by the court, may be executed by the sale or sales, at not less than fair upset prices, to be fixed by the court, of all or any part of the property of the debtor, all on such conditions and in such manner as the court may direct. Upon any such sale or sales, the property and assets offered for sale may be purchased for the benefit of the new company by the reorganization committee, and in that event there shall be applied on account of the purchise price the distributive share of the proceeds of such sale of all securities, the holders of which shall have assented to the plan, and of the securities, though not assenting to the plan, of all
371 classes which shall have accepted the plan. If the property of the debtor or a substantial portion thereof so offered for sale should be sold to others than the reorganization committee, the plan herein approved shall be deemed inoperative except insofar as provision is made therein for the sale of the properties as may be ordered by the court, except that if the properties of the Chicago, Milwaukee & Gary Railway Company should be sold to others

than the reorganization committee, the plan shall be executed without the inclusion of that property in the reorganization, and the coverage of the mortgages and the issue of securities shall be adjusted accordingly as directed by the court. In the event of any such sale of substantially all of the properties to the reorganization committee, it may in its discretion sell all or any portion of the new securities distributable under the plan in respect of securities of any creditor, if neither such creditor nor the class to which such creditor belongs shall have accepted the plan, provided that creditors in a class which shall not have accepted the plan and who themselves shall not have accepted the plan, shall have the right, if they shall so notify the committee within a period of 30 days after the confirmation of the sale, to assent to the plan and receive the securities allocated to them under the plan in lieu of their aliquot share of the proceeds of such sale. The proceeds of sale of securities may be used to pay the portion of the purchase price payable in cash on any such sale of the properties.

Q. The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively.

R. Acceptance of the plan shall include acceptance of the provisions of the new bonds, mortgages, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set forth in full herein.

S. The carrying out of the plan shall be as provided in the Bankruptcy Act.

It is further ordered, That the journal entries covering the necessary accounting adjustments under the plan herein approved shall be submitted to the Bureau of Accounts of this Commission for approval before the permanent accounting records are made;

It is further ordered, That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's property, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, ex-

cept as provided herein, or until further action by this Commission upon confirmation of the plan by the court.

It is further ordered, that, except in so far as the modifications of plan herein approved are modifications sought in the petitions filed, such petitions be, and they are hereby, denied; and

It is further ordered, That the order entered herein on February 12, 1940, be, and it is hereby, revoked and superseded.

By the Commission.

W. P. Bartel,
Secretary.

(Seal)

Filed June 21, 1940.

572 And afterwards, to wit, on the 21st day of June, A. D. 1940, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

573 Order No. 680.

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor. } No. 60463.

ORDER FIXING TIME WITHIN WHICH OBJECTIONS TO THE PLAN OF REORGANIZATION WHICH HAS BEEN CERTIFIED TO THIS COURT BY THE INTERSTATE COMMERCE COMMISSION MAY BE FILED HEREIN, THE TIME WITHIN WHICH BRIEFS MUST BE FILED AND A DATE FOR THE HEARING ON OBJECTIONS TO THE PLAN AND CLAIMS FOR EXPENSES AND FEES AND PROVIDING FOR THE GIVING OF DUE NOTICE TO ALL PARTIES IN INTEREST.

The Interstate Commerce Commission having made its Report and Order on February 12, 1940, in the matter of the reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, therein setting out a plan of reorganization of said Railroad Company, and a certified copy of said Report and Order having been filed with the Clerk of this Court on February 29, 1940, and petitions having been filed by various parties in interest for modification of said plan of reorganization; the said Interstate Commerce Commission having made a Supplemental Report and Order on June 4, 1940, with respect to said plan

of reorganization, which said Supplemental Order revokes and supersedes the said Order of February 12, 1940, and sets out and approves a modified plan of reorganization of said Railroad Company; said Interstate Commerce Commission having thereafter, on June 14, 1940, filed a certified copy of said Supplemental Report and Order with the Clerk of this Court, and the said modified plan of reorganization of said Chicago, Milwaukee, St. Paul and Pacific Railroad Company, as proposed by said Interstate Commerce Commission, being now before this Court; and the Court having, by order entered April 26, 1940, fixed May 31, 1940, as the time within which claims might be filed for expenses incurred and fees for services rendered in connection with these proceedings and the plan of reorganization by those having such claims, such claims to cover all services and expenses up to May 15, 1940, and due and proper notice having been given of the date so fixed, and various claims having been filed, copies of which have been forwarded to the Interstate Commerce Commission for the fixing of maximum limits with respect to the amounts to be allowed;

Now, Therefore, pursuant to the provisions of Section 77 of the Act of July 1, 1898, entitled, "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" and Acts amendatory thereof and supplementary thereto, on the Court's own motion,

It Is Hereby Ordered:

(1) That all parties in interest, whether they have intervened herein or become formal parties to the record in this proceeding or not, having any objections to such modified plan of reorganization, shall file in writing, in
574 duplicate, detailed and specific objections to said plan and their claims, if any, for equitable treatment, in the office of the Clerk of this Court in the United States Court House, in the City of Chicago, Illinois, on or before the first day of August, 1940, and shall serve copies thereof on other parties herein;

(2) That any and all objections to said modified plan of reorganization and any and all claims for equitable treatment which may be filed herein pursuant to this order, as well as any and all petitions for allowance of expenses or fees incident to the reorganization proceedings and plan and filed herein within the time heretofore allowed, be, and they hereby are, set for hearing on Wednesday, September 4, 1940, at ten o'clock A. M., Chicago Daylight

Saving Time, in the room occupied by me as a Court Room in the United States Court House in the City of Chicago;

(3) That each party desiring to be heard with reference to his objections to said modified plan of reorganization and any and all claims for equitable treatment, or with reference to claims for expenses and fees, shall file a brief presenting his views with reference thereto on or before the 20th day of August, 1940, and in the foreword of said brief shall state the time which he will require at the hearing to present his case to the Court and shall serve copies of said brief on other parties herein;

(4) That Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, shall forthwith give notice of this order and all of the provisions thereof to the Debtor, the Interstate Commerce Commission, each and every party of record in these reorganization proceedings and each and every Trustee under any railroad mortgage or Deed of Trust, or Equipment Trust Agreement, covering property owned or operated by the Trust Estate, and to each of those who have heretofore filed claims herein for services or expenses in connection with these proceedings or the plan, either by delivering personally or by mailing to the last known address by registered mail to each of the foregoing, or their attorneys if they have appeared by attorneys, a copy of this order;

(5) That the said Trustees give notice of the entry of this order and all of the provisions thereof to all stockholders, creditors and to all other parties in interest and to all others by publishing a copy of this order in full in one newspaper of general circulation in each of the Cities of Chicago, Illinois, New York, New York, and Seattle, Washington, said publications to be made once each week for two successive weeks, the first of said publications to be made not later than June 26, 1940, and that the said Trustees file in these proceedings proper proof of the service of this order and of publication thereof as herein directed.

Enter:

James H. Wilkerson,
District Judge.

Dated June 21, 1940.

580 And afterwards, to wit, on the 16th day of July, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit: Entered July 16, 1940.

581 Order No. 694.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER EXTENDING TIME WITHIN WHICH TO ELECT WHETHER TO ADOPT OR DISAFFIRM CONTRACTS TO AND INCLUDING JANUARY 31, 1941.

This day coming on to be heard the oral motion of Counsel for Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, for an order extending the time within which to elect whether to adopt or disaffirm leases, agreements or contracts, and it being represented that the Trustees have not as yet fully completed the examination of the leases, the agreements and contracts to which the debtor is a party, or under which it may be obligated, in order to determine whether to elect to adopt or disaffirm same within the time fixed by the order of this Court entered herein on January 19, 1940, and it appearing that due notice of said motion has been served on each party to this proceeding entitled to notice and the Court having considered the motion, heard the statements of Counsel and being fully advised in the premises, it is

Ordered, that the time fixed by order entered herein January 19, 1940, within which the Trustees may elect whether to adopt or continue in force, or to refuse to adopt or continue in force, or to disaffirm or reject, any lease, trackage, terminal, crossing or operating agreement, or other contract not fully performed, to which the Debtor is a party, or under which it may be obligated, shall be extended to and including January 31, 1941.

Except as hereby modified, Paragraph (4) of the order

entered herein June 29, 1935, shall remain in full force and effect.

The Court reserves full right at any time, upon such further orders in the premises as the Court may deem proper, to amend, modify, or otherwise change or rescind the present order.

Enter:

Dated July 16, 1940. Holly, *District Judge.*

Filed July 19, 1940.

582 And on, to wit, the 19th day of July, A. D. 1940, came The New York Central R. R. Co., by Its attorneys and filed in the Clerk's office of said Court Its certain Objections in words and figures following, to wit:

583 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTION OF THE NEW YORK CENTRAL RAILROAD COMPANY TO MODIFIED PLAN OF REORGANIZATION.

Now comes The New York Central Railroad Company, a corporation (hereinafter referred to as this Claimant), by S. C. Murray, its Attorney, and objects to the Modified Plan of Reorganization heretofore approved and certified to this Court by the Interstate Commerce Commission, for the reason that said plan with reference to the payment of claims does not provide for the payment of the claim of this Claimant for balances which may be due to it from the Debtor for its proportion of interline revenues which have not as yet been mutually and finally audited and which cannot be so mutually and finally audited prior to the completion of the reorganization.

To support this objection, this Claimant states:

Pursuant to the authority granted to the Trustees of the Debtor, the orderly settlement of the balances due from this Claimant to the Debtor and from the Debtor to this Claimant on their interline accounts has been completed insofar as that has been possible. On certain classes of traffic, however, it has not been possible fully to adjust and settle the respective accounts of said carriers due to the fact that the division of the revenue accruing to each carrier was the subject of a controversy between the East-

ern carriers and the Western carriers generally, such traffic involving class rates under Interstate Commerce Commission Docket 17000, Part 2. In order to arrive at a settlement of said controversy, committees were appointed by each group of carriers and as a result of their conferences, an agreement for the settlement of the disputed division was recently made, to which this Claimant and the Debtor are parties.

There is involved in said interline accounts a large amount of traffic, both carload and less than carload and the plan of auditing said accounts contemplates the examination of a large number of records and files covering traffic moving over a period of approximately four years before and four years subsequent to the commencement of these reorganization proceedings and although this Claimant and the Debtor have proceeded with due diligence and will continue to do so, it will not be possible to complete the audit to determine the net balance due this Claimant or the Debtor, as the case may be, on account of traffic handled under rates prescribed in Docket 17000, Part 2, prior to the completion of reorganization.

This Claimant further represents that there are also pending and undisposed of numerous other disputes between the Claimant and the Debtor, relating to division of freight revenues on interline accounts; that failure to reach settlement of such disputes is due to no fault or
584 failure on the part of the Debtor or the Claimant and that said disputes would, in the normal routine of departmental work of the Debtor and this Claimant, eventually be settled.

This Claimant further represents that said account involves a large number of claims aggregating, as nearly as can be ascertained at this date, approximately the sum of $314,000.00 due from the Debtor, and that said Debtor has similar claims against this Claimant, the amount of which is to this date undetermined, but which may be determined by the final mutual audit of the account between the Debtor and this Claimant.

This Claimant further states that under the Plan of Reorganization as submitted to this Court, there is some doubt as to whether the language set forth in said Plan of Reorganization is sufficient to provide for the carrying out of the settlement of these said interline accounts as begun and as are being carried on by the Trustees pursuant to the order of this Court heretofore entered.

Wherefore, this Claimant objects to the approval of said Modified Plan of Reorganization and prays that said Modified Plan of Reorganization be further modified or amended by adding the following sentence at the end of the second paragraph of part M at the top of page 39 thereof:

"The new Company shall carry on and complete the auditing of accounts due to and from the Debtor and shall adjust and pay, in cash, or by set-off, when determined to be valid, all claims similar in nature to those which the Trustees have been authorized to pay by order of the Court."

This Claimant further prays that the Court give any other or further relief that it may deem proper to protect the rights of this Claimant in the settlement of interline accounts and balances between the Debtor and this Claimant not settled prior to the completion of Reorganization.

Respectfully submitted,
The New York Central Railroad Company,
By S. C. Murray,
Its Attorney.

[Verification omitted in printing.]

Filed July 27, 1940.

585 And on, to wit, the 27th day of July, A. D. 1940, came the St. Louis Union Trust Company by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit:

586 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Objections of St. Louis Union Trust Company and Illinois State Trust Company, as Trustees for Chicago, Milwaukee and Gary Railway Company First Mortgage Five Per Cent Forty Year Gold Bonds, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company, and Loraine G. Franciscus to Modified Plan of Reorganization Approved by the Interstate Commerce Commission.

Now come St. Louis Union Trust Company and Illinois State Trust Company, as Trustees in a certain mortgage deed of trust dated as of April 1, 1908, executed by the

Chicago, Milwaukee and Gary Railway Company (hereinafter referred to as "Trustees"), securing an issue of Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty Year Gold Bonds described in and secured by said indenture, together with Tower Grove Bank & Trust Company, a corporation, St. Louis Realty & Securities Company, a corporation, and Loraine G. Franciscus (together hereinafter referred to as "Objectors"), and state that said Tower Grove Bank & Trust Company is the holder and owner of $10,000.00 face principal amount of Chicago, Milwaukee & Gary Railway Company First Mortgage 5% Forty Year Gold Bonds, payment of which was guaranteed by the Chicago, Milwaukee and St. Paul Railway Company, and which obligation was assumed by the Debtor herein (hereinafter referred to as the "Gary Bonds"); that St. Louis Realty & Securities Company is the holder and owner of $3,000.00 face prinpal amount of said Gary Bonds; that the said Loraine G. Franciscus is the holder and owner of $10,000.00 face principal amount of said Gary Bonds; that these objections are filed by Objectors on their own behalf and on behalf of all other owners of Gary Bonds who may join in and adopt the same.

Objectors hereby present their objections to that certain Modified Plan of Reorganization approved by the Interstate Commerce Commission, and to the findings of the Interstate Commerce Commission, as set forth and contained in the Report of the Commission of February 12, 1940, and Order of the Commission of even date therewith, the Supplemental Report of the Commission of June 4, 1940, and the Supplemental Order of the Commission of even date therewith, and their claims for equitable treatment, as follows:

(1) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, in that they provide that the holders of the $3,000,000.00 principal amount of Gary Bonds shall receive for their total claim of $3,000,000.00 principal and $562,500.00 accrued interest to December 1, 1938, $2,671,875.00 par value of 5% 587 Preferred Stock and 8,906¼ shares of Common Stock of no par value, instead of providing fair and equitable treatment for the holders of such Gary Bonds.

(2) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, in that they fail to provide

(a) that said Gary Bonds, and the mortgage lien securing the same, shall remain undisturbed;

(b) that said Gary Bonds, both principal and accrued interest thereon, and any expenses incurred by the Trustees, be paid in full in cash; or

(c) that the holders of said Gary Bonds receive new first mortgage 4% bonds provided for in said Modified Plan of Reorganization of a par face value equal to the principal and accrued interest of said Gary Bonds.

(3) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, in that, although in the Supplemental Report of the Commission of June 4, 1940, the Commission finds, as a matter of fact

(a) that the line of railroad subject to the lien of the aforesaid indenture (hereinafter referred to as the "Gary Road"), earned in many years a substantial portion or all of the interest on the Gary Bonds;

(b) that the Debtor derived substantial revenues from traffic contributed by the Gary Road which would be lost if the Debtor should lose control of the Gary Road; and

(c) that the Commission's own valuation of the Gary Road, as of June 30, 1915, was $2,789,475.00.

nevertheless, the Commission apparently failed to give adequate consideration to the facts so found in determining the allocation of the securities of the proposed new company.

(4) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, in that the Commission has ignored the fact that the said Gary Bonds are secured by an underlying first mortgage lien upon property of a value greater than the indebtedness represented by such bonds, and in the said Modified Plan of Reorganization has subordinated the claims of the holders of said bonds to the claims of the holders of bonds which are secured by junior liens upon the said Gary Road, and that said Modified Plan of Reorganization is, therefore, not fair and equitable within the meaning of Section 77 of the Bankruptcy Act of 1898, as amended, does not afford due recognition to the rights of the holders of said Gary Bonds, and will not conform to the requirements of the law of the land regarding the participation of the holders of said bonds in said Plan of Reorganization, and constitutes a taking of the property of the holders of said Gary Bonds without due process of law, contrary to the Fifth Amendment of the Constitution of the United States of America.

(5) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, because said Modified Plan of Reorganization is not fair and equitable within the meaning of Section 77 of the Bankruptcy Act of 1898, as amended, does not afford due recognition to the rights of the holders of said Gary Bonds, discriminates unfairly in favor of other classes of creditors and stockholders, and will not conform to the requirements of the law of the land regarding participation of the various classes of creditors and stockholders.

(6) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, because they provide for the issuance to the holders of said Gary Bonds, which are secured by a first and prior lien upon property of a value in excess of the indebtedness evidenced by said bonds, of securities having a fair market value of less
588 than the scrap value of the rail alone subject to the lien of said mortgage, and, therefore, said Modified Plan of Reorganization is not fair and equitable within the meaning of Section 77 of the Bankruptcy Act of 1898, as amended, does not afford due recognition to the rights of the holders of said Gary Bonds, and will not conform to the requirements of the law of the land regarding the participation of the holders of said bonds in said Plan of Reorganization, and constitutes a taking of the property of the holders of said bonds without due process of law, contrary to the Fifth Amendment to the Constitution of the United States of America.

The Objectors, therefore, as their claim for equitable treatment, pray that said Modified Plan of Reorganization be disapproved by this Court unless and until the same is further modified and amended by providing that

(a) said Gary Bonds, and the mortgage lien securing the same, shall remain undisturbed;

(b) said Gary Bonds, both principal and accrued interest thereon, and any expenses incurred by the Trustees, be paid in full in cash;

(c) the holders of said Gary Bonds receive new first mortgage 4% bonds provided for in said Modified Plan of Reorganization of a par face value equal to the principal and accrued interest of said Gary Bonds.

(7) The Objectors object to said Modified Plan of Reorganization and findings of the Commission, because the Commission failed to determine the value of the property

subject to the lien of the indenture securing said Gary Bonds, and failed to certify such value to the Court in its Report on the plan, although it was necessary for the commission to determine such value for the purpose of determining whether or not the plans of reorganization proposed to the Commission and the Modified Plan of Reorganization approved by the Commission were fair and equitable, afforded due recognition to the rights of each class of creditors and stockholders, did not discriminate unfairly in favor of any class of creditors or stockholders, and would conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

The Objectors ask leave to offer in evidence and be heard in support of the aforesaid objections and claim for equitable treatment.

Dated July 26, 1940.

Respectfully submitted,
Robert H. McRoberts,
Thomas S. McPheeters, Jr.,
Attorneys for Objectors,
1630 Boatmen's Bank Building,
St. Louis, Missouri.
Bryan, Williams, Cave & McPheeters,
Of Counsel.

I hereby certify that I have this day served the foregoing Objections on behalf of St. Louis Union Trust Company and Illinois State Trust Company, as Trustees for Chicago, Milwaukee and Gary Railway Company First Mortgage 5% Forty Year Gold Bonds, Tower Grove Bank & Trust Company, St. Louis Realty & Securities Company, and Loraine G. Franciscus on all other parties in the foregoing proceeding, by mailing copies thereof, properly addressed, postage prepaid, to said parties or their counsel.

Thomas S. McPheeters, Jr.,
Attorney for Objectors.

Dated at St. Louis, Missouri, this 26th day of July, 1940.

589 And on, to wit, the 29th day of July, A. D. 1940, came the Pennsylvania Railroad Company by its attorneys and filed in the Clerk's office of said Court its certain Objections, in words and figures following, to wit:

590 IN THE DISTRICT COURT OF THE UNITED STATES. Filed July 29, 1940.

(Caption—60463)

OBJECTION OF THE PENNSYLVANIA RAILROAD COMPANY TO MODIFIED PLAN OF REORGANIZATION.

Now comes The Pennsylvania Railroad Company, a corporation (hereinafter referred to as this Claimant), by Theodore Schmidt and M. J. Haberkorn, its Attorneys, and objects to the Modified Plan of Reorganization heretofore approved and certified to this Court by the Interstate Commerce Commission, for the reason that said plan with reference to the payment of claims does not provide for the payment of the claim of this Claimant for balances which may be due to it from the Debtor for its proportion of interline revenues which have not as yet been mutually and finally audited and which cannot be so mutually and finally audited prior to the completion of the reorganization.

To support this objection, this Claimant states:

Pursuant to the authority granted to the Trustees of the Debtor, the orderly settlement of the balances due from this Claimant to the Debtor and from the Debtor to this Claimant on their interline accounts has been completed insofar as that has been possible. On certain classes of traffic, however, it has not been possible fully to adjust and settle the respective accounts of said carriers due to the fact that the division of the revenue accruing to each carrier was the subject of a controversy between the Eastern carriers and the Western carriers generally, such traffic involving class and column rates established pursuant to the decision of the Interstate Commerce Commission in Docket 17000, Part 2, wherein was prescribed a general basis of through rates over lines in Official Classification Territory and lines in Western Trunk Line Territory. In order to arrive at a settlement of said controversy, committees were appointed by each group of carriers and as a result of their conferences, an agreement for the settlement of the disputed divisions was recently made, to which this Claimant and the Debtor are parties.

Based upon the petition of the Trustees for an order authorizing and approving their concurrence in the retro-

active application of the divisions of through rates fixed by the Interstate Commirce Commission in Docket No. 17000, Part 2, for the period December 3, 1931, to September 30, 1939, in accordance with agreement covering the establishment of such divisions reached by the Committees appointed by the carriers from Official Classification Territory and Western Trunk Line Territory, which became effective in October, 1939, and provided for the retroactive application of such divisions to December 3, 1931, this Court by its order of June 21, 1940, ordered the concurrence of the Trustees to the retroactive adjustment of the divi-
591 sions with those carriers which are parties to the agreement covering the divisions between the carriers in the respective territories, to which this Claimant is a party, and authorized the Trustees to make such necessary adjustments and refunds for the period involved to conform to the divisions of rates established by said agreement.

There is involved in said interline accounts a large amount of traffic, both carload and less than carload and the plan of auditing said accounts contemplates the examination of a large number of records and files covering traffic moving over a period of approximately four years before and four years subsequent to the commencement of these reorganization proceedings and although this Claimant and the Debtor have proceeded with due diligence and will continue to do so, it will not be possible to complete the audit to determine the net balance due this Claimant or the Debtor, as the case may be, on account of traffic handled under rates prescribed in Docket 17000, Part 2, prior to the completion of reorganization.

This Claimant further represents that there are also pending and undisposed of numerous other disputes between this Claimant and the Debtor, relating to division of freight revenues on interline accounts; that failure to reach settlement of such disputes is due to no fault or failure on the part of the Debtor or this Claimant and that said disputes would, in the normal routine of departmental work of the Debtor and this Claimant, eventually be settled.

This Claimant further represents that said account involves a large number of claims aggregating, as nearly as can be ascertained at this date, approximately the sum of $600,000.00 due from the Debtor, and that said Debtor has similar claims against this Claimant, the amount of which is to this date undetermined, but which may be determined

by the final mutual audit of the account between the Debtor and this Claimant.

This Claimant further states that under the Plan of Reorganization as submitted to this Court, there is some doubt as to whether the language set forth in said Plan of Reorganization is sufficient to provide for the carrying out of the settlement of these said interline accounts as begun and as are being carried on by the Trustees pursuant to the order of this Court heretofore entered.

Wherefore, this Claimant objects to the approval of said Modified Plan of Reorganization and prays that said Modified Plan of Reorganization be further modified or amended by adding the following sentence at the end of the second paragraph of Part M at the top of page 39 thereof:

"The New Company shall carry on and complete the auditing of accounts due to and from the Debtor and shall adjust and pay, in cash, or by set-off, when determined to be valid, all claims similar in nature to those which the Trustees have been authorized to pay by order of the Court."

This Claimant further prays that the Court give any other or further relief that it may deem proper to protect the rights of this Claimant in the settlement of interline accounts and balances between the Debtor and this Claimant not settled prior to the completion of Reorganization.

Respectfully submitted,

The Pennsylvania Railroad Company,
By Theodore Schmidt,
M. J. Haberkorn,
Its Attorneys.

[Verification omitted in printing.]

592 And on, to wit, the 30th day of July, A. D. 1940, came the Trustees by their attorneys and filed in the Clerk's office of said Court their certain Objections, in words and figures following, to wit:

Filed July 30, 1940. 593 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF THE TRUSTEES TO MODIFIED PLAN OF REORGANIZATION CERTIFIED TO THIS COURT BY THE INTERSTATE COMMERCE COMMISSION:

Come now Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, and make and file herein their detailed and specific objections in writing to the modified plan of reorganization, heretofore certified to this Court by the Interstate Commerce Commission, such objections being as follows:

1. They object to said modified plan for the reason that in subdivision E of the order setting forth said plan, at page 10 of the mimeographed copy, in dealing with the use to be made of the reserve and retirement fund, the order fails to provide that such fund may be used for the payment of principal of equipment obligations generally as distinguished from Equipment Trust Obligations.

In support of this objection, the Trustees respectfully show to the Court that many of the equipment obligations of the Trust Estate are in the form of conditional sales agreements, or lease and purchase agreements upon which instalment payments are made periodically. Such obligations should be paid out of the reserve and retirement fund in the same manner and in the same order as payments upon Equipment Trust Obligations, and it is believed that there was no intention upon the part of the Commission to make any distinction in that regard. There appears to be no other provision authorizing the payment of instalments upon such equipment obligations from the reserve and retirement fund.

This objection could be removed by amending subdivision (a) on page 10 of the order to read as follows:

> "(a) Payment of principal of equipment obligations and sinking funds on bonds issued against the purchase of equipment; and if at any time the amount then in said fund, and estimated to be payable into said fund in respect of the remainder of the then current

calendar year, shall exceed the principal of such equipment obligations and sinking funds required to be provided for out of said fund in respect of the remainder of said calendar year, then, to the extent of such excess:".

2. They object to the provision of said modified plan appearing at page 20 of the mimeographed copy of the supplemental order to the effect that the proposed new lease with the Terre Haute shall provide for the payment by the new company of an amount not exceeding $12,000 a year to pay "the taxes and corporate expenses of the Terre Haute."

In support of this objection, the Trustees show to the Court that the property taxes upon property of the
594 Terre Haute amount to approximately $176,000 a year and obviously it was never intended that this item could be provided for out of the stipulated sum of $12,000. It is submitted that the Commission must have intended to include therein only certain special tax items, which could just as readily be included in the general item of corporate expenses.

This objection could be entirely removed by striking out from the language quoted above the words "taxes and."

3. They object to the failure of the modified plan to protect the reorganized company against reduction of the amount of funds available for additions and betterments, which might result from a change or changes in accounting, classification and rules.

In support of this objection, the Trustees call attention to the provision of the plan appearing as the last paragraph on page 24 of the mimeographed copy of the supplemental order reading as follows:

> "If the new company shall establish and maintain, in such manner as may be permitted or required by law or lawful regulation, an operating expense account for its roadway and structures, then the additions and betterments fund shall be paid from the reserve for depreciation on roadway and structures so credited in respect of the applicable income period, to the extent that the amount so credited to said depreciation reserve shall be adequate therefor. If, likewise, the new company shall charge to operating expenses in any year the cost of any additions and betterments, properly chargeable to capital account under the rules now

in effect, then the amount of such charges shall be credited to the additions and betterments fund as a reduction of the payment into the fund for that year."

Under the present accounting rules of the Interstate Commerce Commission, depreciation is not required to be accrued upon roadway and structures, and in cases of property retired and replaced, other than rails, ties and other track material, the cost of renewal of which is charged to operating expenses, the ledger value of the property retired, less salvage, is charged to operating expenses and investment account is credited with the ledger value of the property retired. The charge in operating expenses on account of the retired property, because it does not represent a cash disbursement, provides cash available for additions and betterments over and above that which the plan of reorganization provides from available net income. If the Commission should change its accounting rules so as to require the accruing of depreciation on road property, there would be no charges in operating expenses for ledger values of property retired, less salvage, and to that extent the cash available for additions and betterments would be reduced. In addition, if, in connection with depreciation accounting, the Commission would provide that the cost of renewing ties, rails and other track material be charged to investment account, to that extent additional funds would be required should change its accounting rules to provide for charging operating expenses with the cost of replacing existing property, as has been suggested from time to time, then there would be no charges in operating expenses for retirement of such property, and the cash available for additions and betterments would be reduced to that extent.

The Commission in its report recognizes that, in addition to the appropriation of income for additions and betterments, there will be cash available for the same purpose from road retirement charges and salvage recovered from property retired, and the reduction in the amount of cash available for such purpose, due to changes in accounting rules set out, would seriously hamper the operation of the new company and it is necessary that some protection against such a possibility should be afforded.

595 This objection could be removed by adding at the end of the quoted paragraph the following:

"However, in case the accounting rules now in effect are changed, they shall not operate to reduce the

amount of funds available for additions and betterments below the amount which would be available under an application of existing accounting rules, and if the new company shall charge to investment account in any year the cost of any property renewals properly chargeable to operating expenses under the rules now in effect, the amount of such charges shall be debited to the Additions and Betterments Fund as an increase of the payment into the Fund for that year."

4. They object to said modified plan of reorganization for the reason that said plan does not contain a provision expressly reserving to the new company the right to terminate contracts and leases entered into after June 29, 1935, which contain a specific provision for such termination.

In support of this objection, the Trustees show to the Court that the modified plan provides at page 38 of the mimeographed copy of the supplemental order that the new company shall assume any executory contracts made by the Trustees with the approval or authorization of the Court, which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings; that a number of contracts and leases have been executed by the Debtor or by the Trustees since June 29, 1935, which contain provisions to the general effect that the continuation or termination of the same shall be subject to the further order of this Court and that, upon the entry of final decree, the Railroad Company, or any other purchaser, transferee, possessor or operator of the property, pursuant to such decree, shall have the right to terminate such contracts or leases and some of such contracts and leases provide a definite time within such right to terminate shall be exercised. It is the position of the Trustees that these rights, so set forth in such contracts and leases should be expressly preserved.

This objection could be removed by adding at the end of the last paragraph, which begins on page 38 of the supplemental order and ends at the top of page 39 thereof, the following:

"Provided, however, that the new company shall have such rights to terminate contracts or leases entered into by the Debtor or by the Trustees since June 29, 1935, as are set forth in said respective contracts or leases, which rights shall be exercised within

the time set forth therein, and if no definite time is fixed by the terms of such contracts or leases then the right shall be exercised by the new company within six months after the entry of the final decree in these proceedings, or such further time as may be provided in such decree."

5. They object to the failure of the plan to sufficiently provide for the payment by the new company of claims of a class or classes, which the Trustees have been authorized to pay by order or orders of the Court, but which claims it has not been possible to fully adjust and settle because of accounting delays or other difficulties.

In support of this objection, the Trustees show that, pursuant to authority heretofore granted to the Trustees in certain orders entered by the Court in these proceedings, certain claims, principally of other carriers, have been and are being paid from current operating revenues from time to time as these claims are determined to be correct. Such claims, and particularly those of other carriers, are the subject of adjustment and set-offs between carriers, and the accounting work connected with the final determination of the amount payable is such that it may not be completed until long after the termination of the reorganization proceedings. There are also claims for reparation involved in proceedings pending before the Interstate Commerce
596 Commission, which may not be decided prior to the termination of the reorganization proceedings and other claims within such class or classes which may not be disposed of prior to the termination of these proceedings. The Trustees believe that the plan should contain a provision authorizing the new company to continue to completion payments upon all claims of the class or classes, which the Trustees have been so authorized by the Court to pay.

This objection can be removed by the addition of the following paragraph immediately preceding the first paragraph on page 39 of the mimeographed copy of the supplemental order:

"The new company shall have authority to pay, when the amount thereof has been definitely determined, all claims to the extent that they are unpaid by the Trustees falling within the class or classes of those claims which the Trustees have been authorized to pay by any order or orders of the Court."

6. They object to the failure of the plan to set out with more certainty the nature and mode of treatment of claims arising from the disaffirmance of executory leases and contracts of the Debtor.

In support of this objection, the Trustees show that the modified plan in the last paragraph of subdivision M, appearing on page 39 of the mimeographed copy of the supplemental order, provides that claims arising from the disaffirmance of executory leases or contracts of the Trustees, pursuant to order of the Court, in respect of which claims are filed or evidenced in accordance with orders of the Court, shall be assumed by the new company. The report of the Commission, in dealing with the Terre Haute Lease, makes it clear that in case of disaffirmance thereof, any damages resulting therefrom shall constitute a general unsecured claim against the Debtor and be satisfied by distribution of common stock, as in the plan provided, but no general provision is made for the treatment of claims arising from the disaffirmance of executory leases or contracts of the Debtor. The Trustees feel that definite provision should be made that all such claims shall constitute general unsecured claims against the Debtor and shall be satisfied by the distribution of common stock in the manner provided in the plan. The language of the plan is consistent with this view and the suggestion of the Trustees is in the interest of clarity. This objection can be removed by the addition at the end of the last paragraph in subdivision M, page 39, of the following:

> "Claims arising from the disaffirmance of executory leases or contracts of the Debtor shall constitute general unsecured claims against the Debtor, and shall be satisfied in the same manner as other unsecured claims, under the provisions of the said modified plan."

7. The Trustees further object to the modified plan because of its failure to give to the new company the right to disaffirm contracts or leases of the Debtor made prior to the filing of the petition in these proceedings, and suggest that the plan be corrected by incorporating in the plan the following:

> "The new company may within six months after the consummation of the plan disaffirm any executory contracts of the Debtor or which constitute obligations of the Debtor, entered into prior to the filing of the petition for reorganization herein and as to which the

Trustees have not assumed obligations pursuant to Court approval or authorization, and any claims or damages resulting from such disaffirmance shall be treated in the same manner as herein provided for general unsecured creditors; and the Court shall retain jurisdiction for the purpose of disposing of the same. Any such disaffirmance may be accomplished by following the procedure which the Court by order may prescribe. Such contracts not disaffirmed by the Trustees or the new company shall be assumed by the new company."

Wherefore, the Trustees pray that the said plan be
597 clarified and corrected in the particulars herein suggested to the end that the objections herein set forth may be removed, and that the Court reserve the right at any time prior to final decree herein to cure any defect, supply any omission or reconcile any inconsistency in such manner, or to such extent, as may be necessary or expedient to carry out the plan effectively.

Respectfully submitted,

A. N. Whitlock,
Counsel for the Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

A. N. Whitlock and
C. S. Jefferson,
Attorneys for Trustees,
888 Union Station Bldg.,
Chicago, Illinois.

United States of America,
Northern District of Illinois } ss.
Eastern Division

A. N. Whitlock, being duly sworn, upon his oath deposes and says that he is Counsel for Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, who make the foregoing objections; that he has read the foregoing objections and knows the contents thereof and that the facts alleged therein are true as he verily believes.

A. N. Whitlock.

Subscribed and sworn to before me this 29th day of July, 1940.

J. M. Jarinotz,
(Seal) *Notary Public, Cook County, Illinois.*

My commission expires July 21, 1943.

598 And on, to wit, the 30th day of July, A. D. 1940 came the Reconstruction Finance Corporation by its attorneys and filed in the Clerk's office of said Court its certain Claim for Equitable Treatment, Etc., in words and figures following, to wit: Filed July 30, 1940.

599 In the District Court of the United States.

* * (Caption—60463) * *

CLAIM FOR EQUITABLE TREATMENT AND STATEMENT OF POSITION OF RECONSTRUCTION FINANCE CORPORATION.

This statement is filed on behalf of Reconstruction Finance Corporation pursuant to order herein dated June 21, 1940.

Reconstruction Finance Corporation holds notes of the debtor on which the balance of principal and accrued interest, as of December 31, 1938, amounted to $13,210,463 (revised appendix to ICC Report and Order, dated June 4, 1940, Finance Docket No. 10882, not including a $290,000 payment made January 3, 1939).

Since December 31, 1938, the principal amount of Recon-

struction Finance Corporation's claim on said notes of the debtor has been reduced by payment of:

$290,000, due on January 1, 1939; and
290,000, due on January 1, 1940,

said payments being made pursuant to the orders of this Court dated December 22, 1938 and December 19, 1939, respectively. (Court record pp. 4523-24 and 6033-34). As of January 2, 1940, the principal amount of said claim had accordingly been reduced to $12,630,463. Interest thereon is currently being paid by the Debtor's Trustees on the interest instalment payment dates.

Under plan which the ICC has certified to the Court, said claims will be further reduced by the application thereto, at the time of the consummation of the plan, of cash in the hands of the Trustees of the First and Refunding Mortgage (pp. 33-34 of said ICC Order). We are advised by counsel for said Mortgage Trustees that as of July 15, 1940, the amount of cash held by said Trustees, representing income from pledged collateral, aggregated $1,496,226.75. Application of such in reduction of the principal amount of Reconstruction Finance Corporation's claim will further reduce the principal amount thereof to $11,134,236.25. That Reconstruction Finance Corporation's claim is amply secured was found by the ICC. The bonds of the debtor and other securities, held by Reconstruction Finance Corporation as collateral security for the payment of its claim, are listed on page 25 of the ICC Report, dated February 12, 1940, Finance Docket No. 10882.

Reconstruction Finance Corporation recognizes that the plan of reorganization for the debtor's properties, as certified to the Court by the Interstate Commerce Commission, is not perfect in every detail; that ambiguities will have to be eliminated, omissions supplied and details worked out by the reorganization managers acting within the framework of the plan and under the supervision of the Court.

Reconstruction Finance Corporation recognizes the fact that objections on its behalf to the treatment accorded its claim in the plan might well be filed and could be strongly urged. Realizing, however, the desirability, in the public interest, of getting railroads out of bankruptcy, Reconstruction Finance Corporation is not filing objections to the plan and is refraining from doing so on the theory that the plan will be speedily approved and that the distribution of securities will be in accordance there-

with. Consistently with that position Reconstruction Finance Corporation, as its claim for equitable treatment in this proceeding, respectfully requests the Court to approve promptly the plan of reorganization for the debtor's properties, as certified by the Interstate Commerce Commission, in order that the same may be forthwith submitted to the necessary parties for their respective votes.

It is respectfully requested that the foregoing statement be considered as without prejudice to the right of Reconstruction Finance Corporation to be heard on any and all matters coming before the Court with respect to said plan.

Dated: July 25, 1940.

Respectfully submitted,

C. M. Clay,
Assistant General Counsel Reconstruction Finance Corporation,

A. Marvin Braverman,
Counsel Reconstruction Finance Corporation,

M. O. Hoel,
Attorney Reconstruction Finance Corporation,
164 West Jackson Boulevard,
Chicago, Illinois.

609 And afterwards, to wit, on the 31st day of July, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William H. Holly, District Judge, appears the following entry, to wit: Entered July 31, 1940.

610 Order No. 695.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER.

This cause coming on to be heard upon the petition of Charles B. Roberts III, John E. Blunt, Lemuel H. McHenry, and Roger H. Williams, as a Committee for the protection of holders of the Chicago, Terre Haute & Southeastern Railway Company, First and Refunding Mortgage 5%

Bonds due 1960, of the Southern Indiana Railway Company First Mortgage 4% Bonds due 1951, and of the Bedford Belt Railway Company First Mortgage 5% Bonds due 1938, for leave to intervene specially herein, as set forth in said petition, and it appearing to the court that all parties of record have been duly served with notice of this hearing, and the court being fully advised in the premises; it is hereby

Ordered, that leave be granted to said Charles B. Roberts III, John E. Blunt, Lemuel H. McHenry, and Roger H. Williams, as a Committee as aforesaid, to intervene specially, and they are hereby permitted to intervene specially in this proceeding for the purposes set forth in said petition, and are hereby made parties to these proceedings as such special intervenors, with the rights, among others, to file petitions, motions, and other pleadings and papers, to be heard by testimony or argument, to examine and cross-examine witnesses, and to receive notices of all applications and petitions relating to any plan of reorganization proposed herein or to Chicago, Terre Haute & Southeastern Railway Company or to any of the bonds of the issues represented by said special intervenors, provided, however, that the court reserves the right to enter orders pursuant to petitions or motions of the debtor or any trustees herein without notice thereof to any other party or parties, where, in the judgment of the court, such notice is not necessary to protect the interests of any such party not served with notice.

Enter:

Holly,
Judge of the District Court of the United States, Northern District of Illinois, Eastern Division.

Dated July 31, 1940.

601 And on, to wit, the 31st day of July, A. D. 1940 came Charles B. Roberts, III *et al.*, by their attorneys and filed in the Clerk's office of said Court their certain Objections in words and figures following, to wit:

602 IN THE DISTRICT COURT OF THE UNITED STATES. Filed July 31, 1940.
(Caption—60463)

Objections of Charles B. Roberts III, John E. Blunt, Lemuel H. McHenry, and Roger H. Williams, as a Committee for the Protection of the Holders of the Chicago, Terre Haute & Southeastern Railway Company First and Refunding Mortgage 5% Bonds, of the Southern Indiana Railway Company First Mortgage 4% Bonds, and of the Bedford Belt First Mortgage 5% Bonds to the Modified Plan of Reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company Promulgated by the Interstate Commerce Commission Under Its Report and Order of June 4, 1940, and Their Claim for Equitable Treatment.

Charles B. Roberts III, John E. Blunt, Lemuel H. McHenry, and Roger H. Williams, as a Committee formed May 17, 1940, and acting for the protection of the holders of the Chicago, Terre Haute & Southeastern Railway Company First and Refunding Mortgage 5% Bonds, the Southern Indiana Railway Company First Mortgage 4% Bonds, and the Bedford Belt Railway Company First Mortgage 5% Bonds, (hereinafter called the "Terre Haute First Lien Bondholders Committee"), respectfully show:

A. That the respective members of the Committee either personally own or are members of corporations which own or are acting as agents for owners of bonds of the aforesaid issues and as such Committee represented on July 19, 1940, and now do represent pursuant to powers of attorney or other authority, in excess of $1,500,000 principal amount of bonds of the aforesaid issues, and is receiving, daily, authorizations from holders of additional bonds.

B. That heretofore and in the month of December, 1938, a group of holders of the Chicago, Terre Haute and Southeastern Railway Company First Mortgage 5% Bonds was formed for the purpose of intervening specially in the proceedings before the Interstate Commerce Commission for the reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (hereinafter called the "Milwaukee"), and objecting to the jurisdiction of the Commission and of the court in the above entitled proceedings

to affect the rights of the holders of the bonds secured by mortgages upon the lines and properties of the Chicago, Terre Haute & Southeastern Railway Company, (hereinafter called the "Terre Haute") or to disturb or affect their rights under said bonds, mortgages, and under the lease of the Terre Haute to the Milwaukee. The prayer of said petition was granted in large measure; the Commission permitted the Group to intervene specially and concluded that in these proceedings it was without jurisdiction to bind the Terre Haute bondholders by a plan which modified their security.

603 C. The provisions for the reorganization of said Group provided for the development of a committee for the protection of Terre Haute bondholders, and this committee formed as aforesaid on May 17, 1940, as a result of efforts made by the Terre Haute bondholders in pursuance of such provisions.

D. The Committee represents that it is a party in interest within the meaning of the Order of this court herein entered June 21, 1940, in that the members of the Committee and the persons represented by it are holders of bonds secured by mortgages on the lines and properties of the Terre Haute, the covenants in which, including the payment of interest on said bonds, have been assumed by the Milwaukee in the lease of the lines and properties of the Terre Haute to the Milwaukee's predecessor, the said lease being taken over and assumed by the Milwaukee in 1928 in the proceedings for the reorganization of the Milwaukee's predecessor.

The Committee presents herewith and files its objections to the Modified Plan of Reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and its claim for equitable treatment for the first lien bondholders.

OBJECTIONS.

The Modified Plan of Reorganization for the Milwaukee Promulgated by the Interstate Commerce Commission Pursuant to Its Report and Order of June 4, 1940, Is Not Fair and Equitable to the Terre Haute First Lien Bondholders; Does Not Afford Due Recognition to the Rights of Each Class of Such Bondholders; Discriminates Unfairly in Favor of Clashes of Creditors of the Milwaukee as Against the Terre Haute Bondholders and as Among the Terre Haute Bondholders; and Does Not Conform to the Requirements of the Law of the Land Regarding the Participation of the Various Classes of Terre Haute Bondholders and of the Creditors of the Milwaukee in the Following Respects:

1. Said Plan is not fair and equitable to the Terre Haute bondholders in that it requires

(a) the holders of the Terre Haute First and Refunding Mortgage 5% Bonds and of the Bedford Belt Railway Company 5% Bonds to consent to a reduction of their fixed interest from 5% to 2¾% to which is to be added another 1½% of interest if the additional 1½% be earned by the reorganized Milwaukee in addition to 4½% on the reorganized Milwaukee's proposed new General Mortgage Income 4½% Bonds, of which in excess of $57,000,000 principal amount are to be issued, in spite of the fact that the Terre Haute's earnings available for interest in 1936—designated by the Interstate Commerce Commission as a not unusually favorable period—amounted to $2,990,126,—nearly three times the Terre Haute's interest requirements of $1,023,580 on all its outstanding bonds, if coal hauled over the Terre Haute for the Milwaukee's own use be charged for at regular tariff rates; or, if charged for on a "cost of service" basis, 604 $2,040,187,—nearly twice the Terre Haute's interest requirements on all its bonds outstanding in the hands of the public.

(b) the holders of the Southern Indiana Railway Company First Mortgage 4% Bonds to reduce their fixed interest from 4% to 2¾%, to which should be added an additional 1½% on the same terms as set forth in paragraph "(a)" above.

The unfairness of said Plan and its lack of equity as to the Terre Haute bondholders, is further disclosed by the facts, among others, that the mortgage district upon which the Terre Haute First and Refunding 5's have a first lien produced earnings available for interest in 1938, not an unusually favorable period, of about 3.4 times the interest charges on the Terre Haute First and Refunding 5's, and the mortgage district upon which the Southern Indiana 4's, are secured produced in 1938 earnings available for interest about 2.4 times its interest charges.

2. The said Plan is not fair and equitable to the Terre Haute bondholders in that it requires them to consent to a waiver of the claim of the Terre Haute against the Milwaukee for equipment vacancies under the terms of the Terre Haute mortgages and of the said lease estimated at about $5,000,000 as of June 30, 1935, and being about $7,106,149 as of December 31, 1937, in spite of the fact that the possession and operation of the Terre Haute by the Milwaukee during the years 1921 to 1937 was a source of profit to the Milwaukee to the extent of about $27,000,000, if the Terre Haute's haul of Milwaukee coal be charged for an computed on the basis of regular tariff rates.

3. The said Plan is not fair and equitable to the Terre Haute bondholders for the reason that if substantially all the Terre Haute bondholders do not consent to the Plan, including the provisions therein affecting the Terre Haute and its bondholders, the said lease is to be rejected.

> The rejection of the existing lease will increase—and not decrease, as the Commission's supplemental report says—the difficulties of effecting a reorganization along the line of the capital structure shown in the approved plan. Rejection of the present lease will cause the new company to lose the net earnings and savings which it would otherwise derive from the operation of the leased property, and thus diminish, pro tanto, its income available for fixed charges.

4. The said Plan is not fair and equitable to the Terre Haute bondholders in that it requires the rejection of a lease, viz., the lease of the Terre Haute to the Milwaukee, which is not burdensome, but profitable, to the Milwaukee, in case substantially all the Terre Haute bondholders do not consent to the modifications of their bonds, mortgages, and of the said lease, enumerated in article "G" of the Order of the Interstate Commerce Commission in these proceedings, dated June 4, 1940.

5. The said Plan is not fair and equitable to the Terre Haute bondholders in that it seeks to force under penalty of rejection of the said lease the consent of the Terre Haute bondholders to modifications of their bonds, mortgages, and of the said lease in these proceedings in which neither the court nor the Commission has jurisdiction of the Terre Haute or its bondholders within the provisions of Section 77 of the Bankruptcy Act.

The Alternative with which the Modified Plan confronts the Terre Haute bondholders constitutes (whether or not so intended) a threat and species of duress to which the Terre Haute bondholders should not be subjected. That such is the real nature of the rejection alternative, is shown by the fact that the present lease is a self-supporting asset of the Debtor's estate, and that the rejection is proposed, not for the purpose of cutting off or reducing a loss (for there is none) but for the purpose of securing increased profits. The bonds are widely scattered and held for the most part in relatively small amounts, so that the individual bondholder has, in reality, small choice. The Terre Haute Company has no operating organization or ade-
605 quate working capital; this situation has an adverse effect upon any free choice by the Terre Haute bondholders between the alternatives presented, and constitutes another reason why this court should refuse to put any bondholder in the position to make a choice.

6. The said Plan is not fair and equitable to the Terre Haute bondholders in that it seeks to force a consolidation of the profitable Terre Haute with the bankrupt Milwaukee in these proceedings in which neither the court nor the Commission has jurisdiction of the Terre Haute for the reason that no petition under Section 77 of the Bankruptcy Act has been filed by it or against it, nor is it in receivership in any state or federal court, nor has any proceeding been begun pursuant to the appropriate provisions of the Interstate Commerce Act for the consolidation of the Terre Haute with the Milwaukee.

Said Plan requires that the new lease shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company. Operation by the new company of the Terre Haute properties under a lease arrangement is advantageous to the Terre

Haute and its security holders without any financial, operating or other disadvantages or burden therefrom, as compared with consolidation, to the new company; whereas, a consolidation or other acquisition of title to the Terre Haute properties by the new company would deprive the Terre Haute and its security holders of the advantages inherent in retaining title.

7. The said Plan does not afford due recognition to the rights of the Terre Haute bondholders for the reason that in addition to the facts hereinabove set forth as rendering the Plan unfair and inequitable, no provision is made in it for the satisfaction of the Terre Haute's claim against the Debtor for the $5,000,000 more or less of equipment vacancies existing as of June 30, 1935, nor for the replacement by the Milwaukee trustees of the equipment vacancies which have accrued since June 30, 1935, to date of consummation of the Plan or for payment to the Terre Haute of the values thereof aggregating in excess of $2,000,000 more.

8. The Plan discriminates unfairly against the Terre Haute bondholders and in favor of the Milwaukee bondholders and creditors in that the Plan seeks to compel the Terre Haute bondholders to consent to what amounts to a reduction of rental under said lease with consequent reduction of interest on their bonds so as to enable the reorganized Milwaukee to pay more interest on the new bonds it is proposed shall be issued in exchange to Milwaukee bondholders and creditors for their claims, even though the said lease is profitable to the Milwaukee and the Terre Haute has not failed in the due performance of the terms and conditions therein provided to be performed on its part.

9. The said Plan discriminates unfairly

(a) against the holders of the Terre Haute First and Refunding 5's in that although the mortgage district securing the said bonds is earning about 3.4 times the interest requirements on said bonds, the holders of said bonds are asked to reduce their interest to 2¼% fixed and 1½% contingent interest as above mentioned;

(b) against the Southern Indiana 4's in that although the mortgage district securing the said bonds is earning about 2.4 times the interest requirements on said bonds, the holders of said bonds are asked to consent to a reduction of their interest to 2¾% fixed plus 1½% contingent.

The earnings of the several mortgage districts primarily securing the aforesaid two bond issues do not warrant—even assuming the 1½% additional interest to be earned and paid—a reduction of interest on the First and Refunding 5's and an increase of interest on the Southern Indiana 4's.

10. The said Plan does not conform to the require-
606 ments of the law of the land regarding the participation of the various classes of creditors of the Milwaukee, assuming but not admitting the Terre Haute bondholders to be such, in that the law of the land does not permit junior or general creditors of a bankrupt to participate in the earnings of property covered by a first mortgage until the holders of the first mortgage are satisfied in full for interest and principal, whereas said Plan would take earnings of the properties subject to the first mortgages securing the bonds which this committee represents and pay them to junior or other creditors.

CLAIM FOR EQUITABLE TREATMENT.

In Order to Afford Fair and Equitable Treatment to the Terre Haute and Its Security Holders Said Modified Plan of Reorganization Should Be Disapproved by the Court in Respect of the Matters Affecting the Terre Haute and Its Bondholders Covered by the Foregoing Objections. The Claims of Said Committee for Their Terre Haute First Lien Bondholders for Fair and Equitable Treatment Are as Follows:

1. That the existing lease dated July 1, 1921, of the Terre Haute's lines of railway and properties to the Milwaukee shall be adopted by the new company.

2. That the Milwaukee trustees and/or the new company should make good, in kind, the equipment vacancies existing under said lease and under the mortgages securing the Terre Haute bonds, as of June 30, 1935, and which have accrued and shall accrue up to the date of consummation of the Plan.

3. The Milwaukee trustees, although they have been in

possession of and have operated the Terre Haute since their appointment, have not assumed or rejected the said lease, and while they have paid a rental sufficient to pay interest upon the Terre Haute bonds, they have not paid the rental reserved in the lease, even though they have derived an average annual profit since June 30, 1935, of about $1,500,000 after the payment of rental. During said period the Milwaukee trustees have permitted equipment vacancies under said lease and under the said mortgages securing the Terre Haute bonds to accumulate to an extent of more than $2,000,000 in addition to the above $5,000,000 of such vacancies which have accrued up to July 1, 1935.

607 That the Milwaukee trustees are obligated either to pay the rent reserved in said lease, or to account and pay to the Terre Haute the earnings of the Terre Haute properties after payment of the expenses thereof, but they have failed and refused to do either.

The earnings of the Terre Haute should be segregated and placed in a separate fund, together with the net earnings of the Terre Haute since June 30, 1935, for the benefit of the Terre Haute and its bondholders to make good the defaults of the trustees of the Milwaukee in the payment of rental and for the replacement of the equipment vacancies aforesaid, and to provide means, because of the Debtor's defaults and of the defaults of the trustees of the Debtor under said lease for the payment of the Terre Haute bonds when the same fall due.

These objectors, although they are arranging with all possible expedition, for a study by a qualified railroad expert of the Terre Haute and of its earning power either as part of the Milwaukee system or part of some other railroad system or as an independent railroad unit, and as to what its true place is in the economy of the railroads in official territory, may not be able, because of their recent organization, and of the shortness of time, to complete such study by September 4, 1940, when the hearings upon the objections to the Plan of Reorganization of the Milwaukee are to be had. Your objectors hereby respectfully notify the court and give notice to the other parties

to these proceedings that a continuation of the hearings commencing on September 4, 1940, will be asked for so as to enable these objectors to submit to the court the results of such study, to the end that the court may have such information before it in passing upon these objections and upon said Plan.

Wherefore the Committee holding by the members thereof, a substantial amount of the bonds, and further representing holders of a substantial additional amount of said bonds secured by first liens upon the lines of railway and properties of the Terre Haute, for themselves decline to consent to the modifications of their bonds, of the mortgages securing them, and of the said lease, proposed by the Interstate Commerce Commission's Order of June 4, 1940, article "G" (Mimeo. pp. 18-19-20-21), and pray leave to submit upon the hearing of these objections proof that other holders of Terre Haute first lien bonds represented by the Committee likewise decline to so consent.

And The Committee Further Prays for an order declaring that the said Modified Plan as respects the provisions affecting the Terre Haute and its bondholders is not fair and equitable to the Terre Haute bondholders; does not afford due recognition to their rights; does discriminate unfairly in favor of the Milwaukee creditors as against Terre Haute bondholders and as between the various issues of Terre Haute bondholders; and does not conform to the requirements of the law of the land regarding the participation of the various classes of Terre Haute bondholders in the property and earnings of the Terre Haute, and in the property and assets of the Milwaukee; and referring the proceedings back to the Commission for further action with appropriate instructions to the effect that there is no basis in law or equity for the rejection of the Terre Haute lease, since the same is not burdensome to the Milwaukee, the Terre Haute not being in default under the lease; and that there is no basis in law or in equity for requiring the Terre Haute bondholders to agree to the modifications of their bonds, of the mortgages securing them, or of the said lease as provided in article "G" of the Order of the
608 Interstate Commerce Commission herein dated June 4,

1940, and for such other and further relief in the premises as equity requires.

Dated, New York, N. Y., July 23, 1940.

Respectfully submitted,
Charles B. Roberts, III,
John E. Blunt,
Lemuel H. McHenry,
Roger H. Williams,
Chicago, Terre Haute & Southeastern Railway Company,
First Lien Bondholders Committee,
By Chrales B. Roberts, III,
Acting Chairman.

Hunt, Hill & Betts,
120 Broadway,
New York, N. Y.,

Bell, Boyd & Marshall,
135 South La Salle Street,
Chicago, Ill.,
Counsel to Chicago, Terre Haute & Southeastern Railway Company First Lien Bondholders Committee.

Filed July 31, 1940.

611 And on, to wit, the 31st day of July, A. D. 1940, came Israel A. Abrams et al., by their attorneys and filed in the Clerk's office of said Court their certain Objections in words and figures following, to wit:

612 In the District Court of the United States.

(Caption—60463)

OBJECTIONS OF ISRAEL A. ABRAMS, ET AL., TO THE REPORT OF THE INTERSTATE COMMERCE COMMISSION AND SUPPLEMENTAL REPORT OF JUNE 4, 1940, PURSUANT TO THE ORDER ENTERED JUNE 21, 1940.

Now comes Israel A. Abrams, et al., interveners, by Meyer Abrams, their counsel, and file their objections to the Plan of Reorganization as modified and approved by the Interstate Commerce Commission on June 4, 1940, which objections are as follows:

1. The Plan as approved by the Commission is unfair

and inequitable insofar as it changes the position of the holders and owners of the Debtor's Convertible Adjustment Mortgage Bonds from that of secured creditors to the holders of common stock, for the following reasons:

(a) It appears from the Report that the Debtor has free assets of $5,667,646.00 (p. 149) and that it has a working capital of $10,000,000.00. The Debtor also has pledged certain stocks and bonds as collateral in which there is an equity above the collateral and the creditors have an interest therein. By the change of the position from creditors to common stock holders the remaining creditors will be unjustly benefitted at the expense of the present holders of the Adjustment Mortgage Bonds.

(b) If the property was foreclosed or liquidated the holders of the Adjustment Mortgage Bonds would be entitled to participate in the free assets to the same extent as the mortgage creditors would participate in the event of any deficiency. By the change of the position from creditors to common stockholders the Adjustment Bondholders will, in the event of a future liquidation-foreclosure or insolvency proceedings, be completely wiped out to the same extent as the present stockholders are wiped out, and there is no warrant in law to change the entire holdings of a secured creditor to that of a common stockholder.

(c) The complete change of the position of the class of these bondholders to that of stockholders and the release of their claim as secured creditors and as general creditors on the free assets, without contribution by the other creditors for the betterment of their position, is contrary to the spirit of Section 77 as defined by the Supreme Court of the United States in *Case v. Los Angeles Lumber Products Co.*, 308 U. S. 106.

2. The allotment of $1,788,655.00 in common shares, at a stated value of $100.00 per share, but of no actual value, for a secured debt in excess of $262,000,000.00, without a finding as to the value of the property, and the arbitrary allocation of such securities, is unfair, inequitable and in violation of Section 77, and deprives such class of secured creditors of their property, without due process of law, as provided in the Fifth Amendment to the Federal Constitution.

3. The modification of the Plan under the Voting Trust which gives to the Adjustment Mortgage Bondholders the right to name only one out of five Trustees does not
613 give the proper protection to this class whose debt is about 40% of the total indebtedness and who will be relegated to the position of common stockholders, and vests the control in the creditors who have security for their debts. The Adjustment Mortgage Bondholders are not only thereby deprived of their position as secured creditors but are also placed in a position of common stockholders who are deprived of the management of the property, and such a plan is unfair and inequitable.

4. The Plan should be modified so that the Adjustment Mortgage Bondholders will retain their lien superior to the general creditors on the mortgaged property and will retain their creditors' position to an amount equal to the present free assets and working capital which is also a free asset, and it should be modified in the following respects:

(a) The Adjustment Mortgage Bondholders should receive in exchange of their present holdings the following:

(1) New Income Debentures subject to the Income Debentures given to the prior holders of the Mortgage Bonds for a part of the debt.

(2) Common Stock for the balance of the debt in such proportion as the Court may determine to be fair and reasonable.

(b) Any other modification which will retain the position of the Adjustment Mortgage Bondholders as creditors pertaining to the equity and free assets above the obligations due to the prior Mortgage Bondholders, and a greater voice in the management if they are to be relegated to the position of stockholders.

For the foregoing reasons said intervenors object to the Plan of Reorganization as it appears in the Report of the Commission.

Meyer Abrams,
Attorney for Israel A. Abrams, et al.,
Intervenors.

614 And on, to wit, the 31st day of July, A. D. 1940 came the United States Trust Co., by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit: Filed July 31, 1940.

615 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

OBJECTIONS OF UNITED STATES TRUST COMPANY OF NEW YORK AS TRUSTEE UNDER GENERAL MORTGAGE OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY TO PLAN OF REORGANIZATION PROPOSED BY INTERSTATE COMMERCE COMMISSION.

To the United States District Court:

United States Trust Company of New York as Trustee under the General Mortgage of Chicago, Milwaukee & St. Paul Railway Company makes the following detailed and specific objections to the Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated February 12, 1940, as modified by order dated June 4, 1940 (which Plan as modified is hereinafter referred to as the Plan), certified to this court by the Interstate Commerce Commission, and makes its claim for equitable treatment as herein specified.

I. The Plan is in violation of the requirements of Section 77, subd. (e), of the Bankruptcy Act, in that it is not fair or equitable. It is lacking in fairness and equity for the reasons specified in the following objections.

II. The Plan does not afford due recognition to the rights of the class of creditors consisting of the holders of bonds issued under the said General Mortgage and of this Objectant as Trustee under such mortgage. The General Mortgage is a first lien on substantially all the Debtor's railway system east of Mobridge (Missouri River), constituting the heart of the Debtor's railway system and providing nearly all its earnings, and on the equipment thereon. The value of such railway system and equipment is far in excess of the amount of the present General Mortgage, including all unpaid interest thereon, and the earnings of the property subject to such lien have been and are, and its present and prospective earnings are, in excess of

the interest requirements thereon. The creditors under such mortgage, consisting of its bondholders and this Objectant as Trustee, have a first and paramount lien on such property and its earnings, and are entitled to payment of such mortgage and accrued interest thereon, or provision for their payment, or to new securities preserving the fair equivalent of such lien, before any distribution among junior lienors of the Debtor's property of new securities to be issued on reorganization. In providing for the allocation of new securities proposed to be issued on reorganization the Plan unfairly and inequitably limits the new Fixed Interest bonds to be given the General Mortgage bondholders to 25 per cent in face value of their present first lien bonds. The proposed new Fixed Interest bonds to be given for such 25 per cent will (when augmented by the other bonds of that issue to be given other interests) of themselves exhaust the first lien to be given on the mortgaged property now securing the General Mortgage bonds, although in so doing they will have provided 616 for only a small part, namely 25 per cent, of the present General Mortgage secured debt. As to the remaining 75 per cent portion of the existing General Mortgage debt the effect of the Plan will be to destroy its existing lien and to give in place thereof no first lien securities but merely a share in certain junior securities and preferred stock; thus unfairly and inequitably depriving such General Mortgage creditors of their vested lien.

III. The Plan does not afford due recognition to the rights of the General Mortgage bondholders in that in respect to the securities allotted to such bondholders it does not give them securities preserving for them their existing priority of lien over the junior liens of other classes of creditors. For 20 per cent of the face value of their present holdings the Plan allots to General Mortgage bondholders new Contingent Interest bonds, Series B, but it does not give them the entire lien and security of such bond issue. On the contrary, it dilutes such lien and the security of such Contingent Interest bonds, Series B, by making it merely a part of the entire issue of Series B bonds, thus diluting the security thereof and forcing the General Mortgage bondholders to share it with creditors holding a junior lien, namely with the bondholders under the Fifty-Year 5 per cent Mortgage. Such dilution of lien is unfair and inequitable and does not accord due recognition to the rights of General Mortgage bondholders.

IV. The Plan does not afford due recognition to the rights of the General Mortgage bondholders in that in respect to the preferred stock allotted to such bondholders it does not give them stock preserving for them their existing priority over the junior liens of other classes of creditors, or any priority of any kind. For 20 per cent of the face value of their present holdings the Plan allots to General Mortgage bondholders new preferred stock, but it does not give them the entire stock issue. On the contrary, it dilutes such stock interest by making it merely a part, and by far the smaller part, of the issue of the new preferred stock, thus diluting both the proportion and the value of the interest represented thereby and forcing the General Mortgage bondholders to share it with creditors holding a junior lien, namely with the bondholders under the Fifty-Year 5 per cent Mortgage. Such dilution is unfair and inequitable and does not accord due recognition to the rights of General Mortgage bondholders.

V. The Plan discriminates unfairly in favor of the class of creditors constituting the bondholders and mortgage trustee under the Fifty-Year 5 per cent Mortgage, in that it allots to them a portion of the new Contingent Interest bonds, Series B, and a portion of the new preferred stock, in both of which issues the General Mortgage bondholders are required under the Plan to receive part of their new securities, thus diluting the lien of the Series B bonds to be received by the General Mortgage bondholders, and diluting the proportionate interest in the new company in the form of new preferred stock to be received by them. The Fifty-Year Mortgage is a lien junior to that of the General Mortgage on the main line of Debtor's railway and its bondholders' rights in and claims upon the main line of the system are subordinate in right to those of the General Mortgage Trustee and bondholders.

VI. The Plan discriminates unfairly in favor of the bondholders and mortgage Trustee under the Fifty-Year 5 per cent Mortgage in that it allots to them new Contingent Interest bonds, Series B, which as to part of the new securities allotted to the General Mortgage bonds, namely, the preferred stock, will be a security prior in lien to such preferred stock allotted to the General Mortgage bondholders.

617 VII. The Plan does not afford due recognition to the rights of the General Mortgage bondholders in that it provides for the inclusion among the fixed charges of an

amount sufficient to pay a portion of the interest on a group of bonds referred to as the Terre Haute bonds, none of such bonds being a lien on the property covered by the first lien of this Objectant's mortgage; thereby reducing the fixed interest return to the General Mortgage bondholders and depriving them of a portion of the value of their lien and unfairly and inequitably reducing the amount of income providing a basis for Fixed Interest bonds and reducing accordingly the amount of Fixed Interest bonds given them.

VIII. The Plan does not afford due recognition to the rights of the class of creditors consisting of the holders of bonds issued under the General Mortgage and of this Objectant as trustee under such mortgage, and discriminates unfairly in favor of creditors of the classes ranking below them in priority, in that it imposes as a charge on the earnings of the proposed new corporation the requirement of the setting up, out of the earnings of the new corporation, of a mandatory Additions and Betterments Fund of $2,500,000 per year to provide for capital requirements, thus withdrawing that amount from the earnings properly applicable to the payment of interest on the proposed bonds to be given to the present holders of General Mortgage bonds in exchange therefor; and that in respect to the remainder of the proposed Additions and Betterments Fund, namely the discretionary portion thereof amounting to $2,500,000, the Plan interposes such discretionary fund ahead of the interest requirements of the new securities ranking below the new Series A Contingent Interest bonds, part of which are to be received by the present General Mortgage bondholders, and discriminates unfairly against the present General Mortgage bondholders; such Additions and Betterments Fund being set up for capital requirements and diverting into such fund a substantial portion of the earnings which should properly be appropriated to payment of the interest on the new bonds to be issued to the present General Mortgage bondholders.

By the creation of such Additions and Betterments Funds the Plan (1) provides for a mandatory fixed charge of $2,500,000 for a purpose to which the earnings may not lawfully be appropriated by a mandatory requirement in a plan of reorganization; and (2) grants to the directors power to impose a discretionary further fixed charge of $2,500,000 for a purpose to which the earnings may not lawfully be appropriated by a discretionary power con-

ferred by a plan of reorganization. By this provision for a mandatory fund and for a fund to be established hereafter under a power delegated in advance, the amount available for the payment of interest and other lawful fixed charges is decreased in violation of the rights of the General Mortgage bondholders; whereas if the fixed charges were limited to the purposes for which fixed charges may lawfully be established by a Plan of Reorganization there would be adequate coverage of interest charges on a larger amount of bonds than that provided for by the Plan and thus a larger amount of such bonds available for the General Mortgage bondholders.

IX. The Interstate Commerce Commission has included in its report a finding that the limitation of the fixed charges of the system of approximately $4,269,654 is reasonable and proper. This finding is without evidence to support it. It is arrived at by deducting from the probable earnings found and reported by the Commission to be prospectively available for fixed charges, (namely $6,769,454) a mandatory Additions and Betterments Fund for 618 capital expenditures amounting to $2,500,000; a deduction thus transformed into a fixed charge in disregard and contravention of the enumeration of fixed charges established by Section 77(b) (4) of the Bankruptcy Act and one not fair or equitable and not affording due recognition to the rights created by this Objectant's mortgage, and such deduction is not fair or equitable to this Objectant's bondholders.

X. Not only are the bondholders under this Objectant's mortgage to be limited, in their Fixed Interest bonds, to 25 per cent of their present holdings, but the Plan provides that bonds under the Fixed Interest Mortgage may be issued without limit in amount, so that the junior securities to be given to the present General Mortgage bondholders for the remaining 75 per cent of their holdings will be subject not only to the amount of Fixed Interest bonds to be presently issued but also to any amount of such bonds that may hereafter be issued to finance new enterprises which may render the security more hazardous. This is unjust, unfair and equitable and not in accordance with the law of the land.

XI. In dealing with the problem of reducing the fixed charges to an amount for which coverage is reasonably assured, the Plan not only reduces the fixed interest to be

received by the General Mortgage bondholders but (by requiring them to take junior securities for 75 per cent of their holdings) unnecessarily impairs the security for 75 per cent of their principal and thereby fails to afford due recognition to the rights of the General Mortgage bondholders; the junior securities offered the General Mortgage bondholders not preserving for such bondholders the next succeeding lien to which, on any reduction of their Fixed Interest bonds to provide coverage for the fixed charges, they would be entitled.

XII. The Plan discriminates unfairly in favor of the Fifty-year Mortgage bondholders and does not afford due recognition to the rights of the General Mortgage bondholders, in that it fails to accord to the General Mortgage its priority of lien on the lines of railway referred to in the Commission's report as "pieces east", and gives to the Fifty-year Mortgage bondholders favorable treatment to which in view of the junior lien of such mortgage on such pieces east they are not entitled.

XIII. By retaining in the reorganized system the lines west of the Missouri River, on which the General Mortgage is not a lien, the proposed Plan improperly imposes on the operation of the property covered by the General Mortgage the annually recurring deficit in the operation of the western lines. This deficit has been, now is and prospectively will be a substantial one. The lines west were acquired long after the execution of the General Mortgage; they were not an integral part or any part of the system subject to the General Mortgage, nor do they in any sense constitute an accretion or ordinary enlargement of the General Mortgage system. In the enlarged system on which the Plan proposes to give new mortgage bonds and preferred stock in place of the present General Mortgage bonds, these western lines are a liability rather than an asset. Their inclusion in the system subject to the proposed new mortgage weakens the mortgage and seriously impairs the earnings of the system. Integrated as an inseparable component of the railway system, as the Plan proposes to integrate them, these lines and their operating deficits constitute a permanent drain on the system's revenues and reduce by a substantial amount the earning power of the mortgaged property on which the new bonds are to be issued. The General Mortgage Trustee acquired by its mortgage the right to resort to the property covered

by its mortgage, and it is in contravention of its and
619 their rights to force its bondholders to accept bonds on a railway system different from that covered by its mortgage and, by the inclusion of other unprofitable lines, rendered of less value and earning power than the original mortgaged property. No compensating advantage is offered the General Mortgage Trustee and bondholders. The proposed lien on the lines west adds nothing to, and in fact detracts from, the value of the new bonds. The Plan would deprive the General Mortgage Trustee and bondholders of their property without due process of law and would be in violation of the law of the land. Whatever new mortgage, if any, is to be placed on the lines west should be the mortgage of a separate company, and such new mortgage may not properly share in the earnings of the General Mortgage except in subordination to the prior rights of the General Mortgage Trustee and bondholders.

Claim for Equitable Treatment.

This Objectant claims equitable treatment which is not accorded it by the Plan; namely that the holders of its bonds should receive Fixed Interest Mortgage bonds in an amount fairly commensurate with the value and earning capacity of the property subject to its mortgage; that the provision for an Additions and Betterments Fund should be eliminated and the amount of the mandatory $2,500,000 portion thereof capitalized at 4 per cent per annum, or at such other rate as shall be found fair and equitable, and that such amount, namely, $62,500,000, or such portion thereof as may be found fair and equitable, be included in the new Fixed Interest Mortgage and bonds thereunder to that amount given to the General Mortgage bondholders; that to whatever extent the amount of new Fixed Interest Mortgage bonds allotted to present General Mortgage bondholders shall fall short of the amount of principal and unpaid interest of their bonds the General Mortgage bondholders should receive new Contingent Interest bonds and that none of such Contingent Interest bonds should be issued or allotted except to the holders of General Mortgage bonds and of Milwaukee and Northern Consolidated Mortgage bonds; that the provision for payment as a fixed charge of interest on the Terre Haute bonds be eliminated; that the corporation executing the new Fixed Interest Mortgage bonds be not burdened with the ownership or

operation of the lines west of the Missouri River; and in whatever form or by whatever structure the reorganization be effected that except only for the $11,947,164 of Fixed Interest Mortgage bonds to be issued for the loans of the Reconstruction Finance Corporation and the $1,554,143 of Fixed Interest Mortgage bonds to be issued for Milwaukee and Northern First Mortgage bonds, the absolute priority in right and lien of the General Mortgage bonds (along with the $1,329,815 to be issued for the Milwaukee and Northern Consolidated Mortgage bonds) be maintained unimpaired in the securities to be given for such bonds.

Dated, July 30, 1940.

United States Trust Company of New York,
as Trustee under general mortgage of Chicago, Milwaukee & St. Paul Railway Company,

By Henry L. Smithers,
Assistant Vice-President,
45, Wall Street, New York City.

Wilson & McIlvaine,
120 West Adams Street,
Chicago, Illinois.

Stewart & Shearer,
45, Wall Street,
New York City.

Attorneys for United States Trust Company of New York, as Trustee, Objectant.

624 And on, to wit, the 31st day of July, A. D. 1940, came the Chicago, Terre Haute & Southeastern by Its attorneys and filed in the Clerk's office of said Court its certain Objection in words and figures following, to wit: Filed July 31, 1940.

625 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF CHICAGO, TERRE HAUTE AND SOUTHEASTERN RAILWAY COMPANY TO MODIFIED PLAN OF REORGANIZATION OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, AND CLAIM FOR EQUITABLE TREATMENT.

Chicago, Terre Haute and Southeastern Railway Company (hereinafter called the "Terre Haute"), presents and files its objections to the modified plan of reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and its claim for equitable treatment.

Objections.

The Modified Plan of Reorganization Is Not Fair and Equitable to the Terre Haute, and Does Not Afford Due Recognition of Its Rights Created by and Existing Under the Lease Dated July 1, 1921, in the Following Respects:

1. Said plan requires a new lease to be made between the Terre Haute and the new company under the terms of which the present lease rental will be reduced by means of

(a) reducing the respective interest rates now borne by the First Mortgage bonds of the Bedford Belt Railway Company and by the First and Refunding bonds and the Income bonds of the Terre Haute; and

(b) separating the modified interest to be thus paid upon said bonds and the First Mortgage bonds of the Southern Indiana Railway Co., into two kinds, the payment of one of which is contingent upon earnings of the new company; and

(c) making such contingent interest dependent upon the available net income of the entire system of the

new company instead of upon the net earnings and savings of the new company derived from the leased line of the Terre Haute.

Such requirements are inequitable and unfair in view of the fact that the earnings and savings to the Lessee from its operations of the leased line have been far in excess of rental expense, and there is no evidence that such will not continue to be the case. In short, such requirements are intended to help out Milwaukee bondholders at the expense of Terre Haute bondholders. The former have no rights, and the latter have no duty, in that behalf.

2. Said plan requires the holders of bonds issued by the Terre Haute, or constituting a lien on its property, to waive all equipment vacancies existing prior to January 1, 1939, instead of prior to June 29, 1935, the date of the filing of the debtor's petition herein. Replacement of equipment retired since June 29, 1935, represents an administration expense of the Trustees in respect of which the Commission has no jurisdiction, such jurisdiction being exclusive with this Court under the provisions of Section 77, sub-section (e)(3).

3. Said plan requires that the new lease shall contain such provisions as may be deemed appropriate to facilitate a consolidation of the properties of the Terre Haute with those of the new company. Operation by the new company of the Terre Haute properties under a lease arrangement is advantageous to the Terre Haute and its security holders without any financial, operating or other disadvantages or burden therefrom, as compared with consolidation, to the new company; whereas, a consolidation or other acquisition of title to the Terre Haute properties by the new company would deprive the Terre Haute and its security holders of the advantages inherent in retaining title.

4. Said plan requires the existing lease to be rejected by the new company in the event the Terre Haute bondholders do not accept all of the provisions of the plan relative to the treatment of the Terre Haute bonds and the lease. This alternative is inequitable and unfair in that

(a) the provisions of the plan herein objected to are unnecessary to the success of the modified plan of reorganization with those provisions omitted. The rejection of the existing lease will increase—and not decrease, as the Commission's supplemental report says—the difficulties of effecting a reorganization along the line of the capital structure shown in the approved

plan. Rejection of the present lease will cause the new company to lose the net earnings and saving which it would otherwise derive from the operation of the leased property, and thus diminish, pro tanto, its income available for fixed charges.

(b) it constitutes (whether or not so intended) a threat and species of duress to which the Terre Haute bondholders should not be subjected. That such is the real nature of the rejection alternative, is shown by the fact that the present lease is a self-supporting asset of the debtor's estate, and that the rejection is proposed, not for the purpose of cutting off or reducing a loss (for there is none) but for the purpose of securing increased profits. The bonds are widely scattered and held for the most part in relatively small amounts, so that the individual bondholder has, in reality, small choice. The Terre Haute Company has no operating organization or adequate working capital after being out of active business for 19 years; this situation has an adverse effect upon any free choice by the Terre Haute bondholders between the alternatives presented, and constitutes another reason why this Court should refuse to put any bondholder in the position of having to make a choice.

5. The modified plan does not conform to the requirements of Section 77 of the Bankruptcy Act in the following respects:

(a) In the event the lease be rejected as provided in said plan (supplemental order, pages 18-21) such rejection will, by established legal principles, relate back to the inception of the proceeding, i. e., June 29, 1935. The plan makes no provision for such relation back, but on the contrary provides that the rejection of the lease shall be "as of the date of such determination by the Court" (supplemental order, page 21). Neither the Commission nor the Court has power to make the rejection effective as of such date of determination.

(b) In the event of such rejection of the lease as provided in said plan, the Terre Haute will become entitled to receive all of the revenues and income derived from the operation of the leased properties by the Trustees, less expenses of such operation. The plan does not make any provision for such payment.

627 Claim for Equitable Treatment.

In Order to Afford Fair and Equitable Treatment to the Terre Haute and Its Security Holders, Said Modified Plan of Reorganization Should Be Disapproved by the Court in Respect of the Matters Covered by the Foregoing Objections. The Claims of the Terre Haute for Fair and Equitable Treatment Are as Follows:

1. That the existing lease of July 1, 1921, shall be adopted by the new company; or, if this claim be rejected by the Court the following claim be approved in lieu thereof:

2. That the existing lease of July 1, 1921, shall be adopted by the new company in the event that said lease be modified and the several mortgage indentures securing the bonds which constitute liens upon all or any part of the Terre Haute properties be modified by substantially all the Terre Haute bondholders (such modifications of mortgage indentures to be submitted to the Terre Haute bondholders in accordance with the method prescribed therefor in the modified plan of reorganization) in the following respects and no other:

(a) The maturity of all such bonds shall be the date of maturity of the first mortgage series A bonds of the new company;

(b) The holders of said bonds shall waive all equipment vacancies under the existing mortgages up to June 29, 1935;

(c) The new company may, in the replacement of equipment vacancies occurring on and after June 29, 1935, include equipment purchased under equipment trusts, the lien of the trusts not to exceed 75 per cent of the total cost of the equipment;

(d) The mortgages shall contain appropriate provisions permitting, subject to the approval of the Interstate Commerce Commission, abandonment of Terre Haute property which the board of directors of the new company may deem it to the interests of the system to abandon.

Respectfully submitted,

Chicago, Terre Haute and Southeastern Railway Company,

By W. F. Peter,

Secretary.

620 And on, to wit, the 31st day of July, A. D. 1940, came the Protective Committee for Preferred Stockholders by Its attorneys and filed in the Clerk's office of said Court Its certain Objections in words and figures following, to wit: Filed July 31, 1940.

621 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF PROTECTIVE COMMITTEE FOR PREFERRED STOCKHOLDERS TO PLAN OF REORGANIZATION APPROVED BY INTERSTATE COMMERCE COMMISSION AND CLAIMS FOR EQUITABLE TREATMENT.

Now come H. C. Orton, D. C. Wolf, J. B. Johnston, Karl A. Meyer and Rucker Penn, as Protective Committee for the holders of prefered stock of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, by its attorneys, and present the following objections to the Plan of Reorganization approved by the Interstate Commerce Commission in its order of February 12, 1940, and modified Plan of Reorganization approved by the Interstate Commerce Commission on June 14, 1940, as certified by said Commission to this Court.

Objections to Plan of Reorganization.

1. The Commission erred in finding that the equities of the preferred stockholders have no value and that the holders of said stock should not participate in the allocation of new securities. There is nothing in the record which justifies the findings of the Commission, which are without support in any evidence, that "the equity of the holders of the debtor's preferred stock and common stock having been found to be of no value, said stockholders shall not be entitled to participate in the Plan."

2. The Commission erred in promulgating a Plan of Reorganization which failed to establish by actual appraisal a valuation of the physical assets of the Debtor made for the purpose of determining whether the Debtor was solvent and whether there was any value in the preferred stock, which failure to make such an appraisal deprived the preferred stockholders of the protection afforded

to them under the Fifth Amendment to the Constitution of the United States. The Commission did not make a new determination of the value of the Debtor's property under the authority of subdivision (e) of Section 77.

3. The Commission erred in ignoring the fact that the value of the Debtor's property established by the Commission itself under Section 19A of the Interstate Commerce Act was substantially in excess of the capitalization established by the Commission for the reorganized Company.

4. The Commission erred in its determination of earning for a normal year for the following reasons:

(a) It does not appear that any consideration has been given to the extensive maintenance program which has been conducted by the Debtor out of earnings since this proceeding has been instituted, as a result of which the real earning capacity of the Debtor has been understated;

622 (b) Calculations of future earnings have been based on the record during the most unfavorable period of the Debtor's history as well as that of industry generally;

(c) No consideration has been given to the increased earning capacity of the Debtor;

(d) No consideration has been given to estimates of savings from coordinations and consolidations with other roads;

(e) No consideration was given to the possibility of adjusting the increased labor costs incurred during the past decade,—the entire burden of which is imposed upon the preferred and common stockholders by the Commission's Plan.

5. The Commission erred in establishing a capitalization for the reorganized Company in an amount less than invested capital in Debtor's property.

6. The Commission erred in establishing the effective date of the Plan as January 1, 1939, rather than July 1, 1935, and further erred in recommending that interest accrued since the date of bankruptcy should be allowed in full to the effective date of the Plan on all issues of bonds and notes of the Debtor.

7. The Commission erred in not having determined the value of the properties of the Debtor and in not having certified the same to the Court in its report of the Plan, as required by Section 77(e) of the Bankruptcy Act.

8. The Commission erred in refusing to permit studies to be made of a plan based on the consolidation of the Debtor and the Chicago & North Western Railway Company.

9. The Commission erred in approving a Plan which is not fair and equitable, does not afford due recognition to the rights of each class of creditors and stockholders, is unfair to preferred stockholders, and does not conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders in distribution of the securities of the reorganized Company, and is not in the public interest.

Now come H. C. Orton, D. C. Wolf, J. B. Johnson, Karl A. Meyer and Rucker Penn, as Protective Committee for the holders of preferred stock of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, by its attorneys, and respectfully request:

(1) That the Court disapprove the Plan of Reorganization promulgated by the Interstate Commerce Commission.

(2) That the Court refer the matter to the Interstate Commerce Commission for a determination of the value of the physical properties of the Debtor as of the date upon which the amount of the claims of the creditors are to be determined, namely, July 1, 1935, said values to be certified to the Court in accordance with the requirements of Section 77(e) of the Bankruptcy Act.

(3) That the Court direct that any Plan of Reorganization promulgated in this case should provide that the amount of claims of creditors should be determined as of July 1, 1935, the date on which the Debtor filed a petition for reorganization, which date should be determined as the effective date of any Plan of Reorganization of the Debtor.

(4) That the Court order the Interstate Commerce Commission to conduct studies and give thorough consideration to a plan of consolidation of the Debtor and the Chicago & North Western Railway Company, and that a hearing before the Interstate Commerce Commission be fixed for that purpose.

(5) That the Court order that any Plan of Reorganization shall grant to the holders of the preferred stock of the Debtor participation not less favorable than that granted to them under the modified Plan of Reorganization submitted by the Debtor herein.

623 That the Court shall sustain the objections to the

Plan hereinabove set forth and that the same be remedied by modification or otherwise so as to obviate said objections.

Wherefore, said Committee prays that the Court disapprove the Plan of Reorganization certified to it by the Interstate Commerce Commission, and moves that the Court enter an order referring the proceedings back to the Interstate Commerce Commission for further action.

Permission to be heard orally and to submit briefs and evidence in support of these objections and claims for equitable treatment is respectfully requested.

Respectfully submitted,
Edward R. Johnston and
Albert K. Orschel,
Counsel for Preferred Stockholders Committee,
11 S. La Salle Street,
Chicago, Ill.

Filed July 31, 1940.

639 And on, to wit, the 31st day of July, A. D. 1940, came the National City Bank of New York by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit:

640 In the District Court of the United States.

(Caption—60463)

OBJECTIONS OF THE NATIONAL CITY BANK OF NEW YORK AND WILLIAM W. HOFFMAN, AS TRUSTEES UNDER THE ADJUSTMENT MORTGAGE OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, TO THE PLAN OF REORGANIZATION OF THE DEBTOR APPROVED BY THE INTERSTATE COMMERCE COMMISSION, AND CLAIMS OF SUCH TRUSTEES FOR EQUITABLE TREATMENT.

The National City Bank of New York and William W. Hoffman, as Trustees under the Adjustment Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, dated as of February 2, 1925, object to the Plan of Reorganization of the Debtor contained in the Report and Supplemental Report of the Interstate Commerce Commis-

sion and the orders entered thereon, which Plan of Reorganization has been certified to this Court, and respectfully submit the following objections to such Plan of Reorganization and the following claims for equitable treatment:

1. The Commission erred in failing to recognize the claims of the Adjustment Mortgage Bondholders to the full extent of principal and interest.

2. The Commission erred in failing to provide that a larger proportion of the claims on existing securities be satisfied by the issuance of Common Stock.

3. The Commission erred in finding (a) that the First Mortgage and General Mortgage respectively shall provide that the principal amount of Bonds pledged as collateral, shall never exceed 150% of the amount of the indebtedness to be secured thereby and (b) that the said mortgages should contain a covenant providing for an Additions and Betterments Fund mandatory to the extent of $2,500,000.

4. The Commission erred in failing to provide for emergency financing in the capital structure of the reorganized company.

5. The Commission erred with reference to dividends on Preferred Stock and on the Common Stock and erred specifically in the following provisions, among others:

(a) That no dividends shall be permitted to be paid on the new Common Stock unless full dividends shall have been paid on the Preferred Stock for three preceding calendar years.

(b) That after dividends have been paid or declared on the Common Stock at the rate of $3.50 a share in respect of any income period, each share of Preferred Stock shall be entitled to participate equally with each share of Common Stock in any additional dividends paid or declared to the extent of $1.00 a share in respect of such income period.

6. The Commission erred in providing that the
641 holders of the Preferred Stock shall be entitled to elect a majority of the Board of Directors until full five per cent dividends shall have been paid upon the Preferred Stock, Series A, for three consecutive calendar years, and that at such time as full dividends on the Preferred Stock, Series A, shall not have been paid during three consecutive calendar years, the holders of the Preferred Stock shall

again become entitled to elect a majority of the Board of Directors and retain this right until full dividends shall have again been paid for three consecutive calendar years.

Dated July 30, 1940.

Respectfully submitted,
The National City Bank of New York
and William W. Hoffman, Trustees
under Adjustment Mortgage,
By: Shearman & Sterling,
55 Wall Street,
New York, New York,
By Sanford H. E. Freund.
Montgomery, Hart, Pritchard
& Herriott,
125 South La Salle Street,
Chicago, Illinois,
By Irving Herriott,
Their Attorneys.

Sanford H. E. Freund,
Irving Herriott,
Of Counsel.

Filed July 31, 1940.

628 And on, to wit; the 31st day of July, A. D. 1940 came the Anglo-Continentale Treuhand A. G. by its attorneys and filed in the Clerk's office of said Court its certain Memorandum in words and figures following, to wit:

629 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Memorandum of Objections to and Suggestions in Respect of Modified Plan of Reorganization and Claim for Equitable Treatment Filed, Pursuant to Order of Hon. James H. Wilkerson, District Judge, Dated June 21, 1940, by Anglo-Continentale Treuhand, A. G. Holder of Milwaukee & Northern Consolidated First Mortgage Bonds, in Behalf of Itself and All Other Holders of Said Bonds.

Comes now Anglo-Continentale Treuhand, A. G. (hereinafter referred to as "Petitioner") and, in behalf of itself and all other holders of Milwaukee & Northern Consolidated First Mortgage Bonds, respectfully shows to this Court and alleges:

1. That by order of this Court, dated June 21, 1940,

August 1, 1940 was fixed as the day on or before which all parties at interest, whether they have intervened herein or become formal parties to the record in this proceeding or not, having objections to the Modified Plan of Reorganization, approved by the Interstate Commerce Commission, referred to in said order, should file in writing, in duplicate, detailed and specific objections to said Plan and their claims, if any, for equitable treatment, and serve copies thereof on all other parties herein.

2. Petitioner is the owner and holder of $1,000 principal amount of First Mortgage Bonds and of $100,000 principal amount of Consolidated Mortgage Bonds of Milwaukee and Northern Railroad Company (hereinafter called "Northern"). Said bonds were assumed by the Debtor and cover important and valuable properties as hereinafter set forth.

3. Petitioner believes that the public interest and the interests of the Debtor and of all classes of its security-holders will best be served if a Plan of Reorganization be promptly approved, but Petitioner believes and asserts that said Modified Plan of Reorganization is unjust, unfair, inequitable and illegal in certain respects in so far as concerns said Consolidated Bonds, and for grounds of its objection urges the following considerations, among others:

(a) At page 18 of the Commission's Report, it is stated that the Consolidated Mortgage is secured by a first lien on approximately 268 miles of line situated north of Green Bay and by a second lien on the lines south of that point. It is also stated that the equipment vacancies up to June 30, 1935, were estimated in excess of $2,000,000 (the correct amount is over $3,000,000). It is further stated that although some question was raised as to the meaning of the covenants of the Northern mortgages with respect to the maintenance of a specific amount of the equipment, counsel for the Debtor concedes that a default exists in this respect.

(b) A page 134 of said Report, it is stated that the
630 cost of reproduction of the property with respect to which the Northern Consolidated Mortgage is a first lien, less depreciation, plus the value of lands and rights, as of December 31, 1935, was $8,223,131, and the corresponding sum for the property subject to the first lien of the Northern's First Mortgage and the second lien of the Consolidated Mortgage was $4,284,286.

(c) The principal amount of Northern First Mortgage Bonds outstanding, as shown upon the appendix to said Report, is $2,117,000; and the principal amount of said

Consolidated Mortgage Bonds outstanding, as shown upon said appendix, is $5,072,000. The Consolidated Mortgage, therefore, has a first lien (exclusive of equipment vacancies), according to said report, upon $8,223,313 of assets, and a second lien (subject to $2,117,000 of Northern First Mortgage Bonds) upon $4,284,286, or an equity in the property covered by the first lien of the First Mortgage, of $2,167,286.

(d) In said Report, it is proposed to deprive the Consolidated Mortgage of its first lien on the aforesaid assets of $8,223,313, and of its second lien upon the aforesaid assets of $4,284,286, and to subject the same to a total of newly issued securities aggregating $58,923,171 of new First Mortgage Bonds, $57,256,669 of New General Mortgage Bonds, Series A, and $51,422,111 of New General Mortgage Bonds, Series B (or an aggregate of $167,601,951 —see Appendix to said Report); and although the properties subject to said first lien of the Consolidated Mortgage Bonds (even without taking into account the value of the second lien of said bonds upon other properties the equity in which is over 40% of the total amount of Consolidated Bonds) are worth more than 160% of the entire amount of the Consolidated Bonds outstanding, it is proposed to allot to the Consolidated bondholders only 25% in new First Mortgage Bonds, 35% in new General Mortgage Bonds, Series A, and 20% in new General Mortgage Bonds, Series B, the remaining 20% being allotted in new preferred stock.

Objection is made that this procedure results in depriving the Consolidated bondholders of their property without due process of law, and without sufficient, adequate or reasonable compensation for the property of which they are thus deprived. It is true that other properties are likewise placed under the aforesaid mortgages, but the interest of the Consolidated Mortgage bondholders therein is greatly diluted; and, secondly, adequate recompense for the properties taken is not accorded to the Consolidated bondholders. A junior mortgage position and a stock position for the greater part of the principal of these bonds is not an adequate legal substitute for a present first mortgage position, which is quite apparently more than adequately secured at present. At the very least, the Consolidated bondholders are entitled to receive 100% in new First Mortgage Bonds, otherwise they are entitled to have their

liens remain undisturbed, as at present, and to secure the direct obligation of the Reorganized Company to pay the principal and interest of their bonds, as the Debtor is their direct obligor now.

(e) No recognition is given in said Plan to the right of the Consolidated bondholders to be recompensed for equipment vacancies. Adopting the figure of $2,000,000 referred to at page 18 of the Commission's Report, the value of such vacancies at June 30, 1935, aggregated almost 40% of the principal amount of the Consolidated Bonds outstanding; and for this important element of value the Consolidated bondholders are given no consideration.

(f). Under the terms of the Consolidated Mortgage, and by law, the Consolidated Mortgage bondholders are 631 entitled to continuing interest until their debt is paid.

As to the proposed General Mortgage Bonds, said Report, limits accumulations to 13½% accumulated interest if unpaid. This results in depriving the Consolidated Mortgage bondholders of their right to continuing interest until their debt is paid, without compensation for the deprivation of such right.

(g) At page 154 of said Report, the Commission finds that the necessity for a voting trust for the new stock has not been demonstrated and thinks that the interest of the securiy holders will be safeguarded if the Debtor's proposals with respect to the manner of electing the new Board of Directors and with respect to the voting rights of stockholders are followed. In the Commission's Supplemental Report, however, a voting trust for a term of five years is established for the preferred and common stockholders, with five voting trustees to be designated by the same interests that designated the members of the Reorganization Committee. While the provisions in respect of the manner of creating the voting trust set forth in the Supplemental Report are an improvement over the proposals for a voting trust as originally submitted, nevertheless Petitioner submits that the security holders should be left free to elect their own representatives upon the Board, that no voting trust should be created (as originally found by the Commission), and that cumulative voting should be provided for.

(h) At page 148 of said Report, the Commission finds that the equity of the holders of the Debtor's preferred stock and its common stock has no value and that the

holders of claims in Classes 24 and 25, therefore, are not entitled to participate in the Plan.

Petitioner supports the finding upon the ground, among others, that until and unless all creditors are satisfied in the order of their priorities, stockholders are not entitled to share; and that if the value of the Road should justify the issuance of stock in exchange for old shares, the creditors are entitled to the benefit of that value, whether present or prospective, for dividends or only for purposes of control; and that in either event there is a right of property out of which the creditors are entitled to be paid before the stockholders can retain it for any purpose whatever. Furthermore, the old stockholders are not being required under any of the Plans to contribute any new money.

(i) The record shows that, despite the fact that the Milwaukee & Northern and its bondholders are entitled to equipment of a value of upwards of $2,000,000, and to have said vacancies made good, not only have they been deprived of said equipment, but in addition excessive and unlawful charges have been made against the earnings of the Mortgage District represented by said Consolidated Bonds, among others the following:

Interest, rent or locomotives, freight and passenger cars, being a sum stated to be the equivalent of 5% of the approximate value of the proposed equipment allocated for use on the Milwaukee & Northern lines	$142,000
Maintenance of equipment	$436,000
Transportation expenses	$907,000

and that included in these figures is an item of "depreciation" on the equipment allegedly allocated to the Milwaukee & Northern bonds.

Also (Stenographic Minutes before the Commission, page 263) that larger expenses have been assumed than would have been incurred, if the Milwaukee & Northern were an independent line, which would make the Milwaukee & Northern show larger earnings than actually shown. (See testimony of Mr. William Sparrow, Vice-President of the Debtor, on hearings on the Plan of Reorganization—S.M. 263.) The result has been to improperly create alleged 632 charges against the earnings of the Milwaukee & Northern Mortgage District; and Petitioner alleges that upon a proper construction of the law and the facts, the earnings applicable to the Milwaukee & Northern Mort-

gage District are greatly in excess of those purported to be shown, and more than sufficient to pay interest charges in full upon the Consolidated Bonds.

Although the Debtor, in its bookkeeping subsequent to 1934, seeks to show that the interest upon the Consolidated Bonds was not earned, nevertheless the earnings have not been separately segregated or sequestered and it is respectfully submitted that the reasoning upon which conclusion is based is erroneous.

As compared with the $142,000 item above set forth for interest, rent on locomotives, etc., the November 30, 1938, report of the Debtor contains an item of "System Equipment—interest rental $191,197"; as compared with the item of maintenance of equipment, $436,000, above set forth, the said November 30, 1938, report contains an item of $520,934; and as compared with the transportation expenses of $907,000 above set forth, the said 1938 report contains an item of $1,134,833.

It is therefore seen that, without apparent cause or justification, the following additional deductions (in round hundreds) have been made from the earnings of the line, subject to the lien of the Consolidated Mortgage:

(a) Equipment rental	$ 49,000
(b) Maintenance of equipment	74,000
(c) Transportation expense	227,000
Total additional charges, over and above those shown in 1934	$350,000

Inasmuch as only $228,000 per annum is required to pay full interest upon the Consolidated Mortgage Bonds, and some sums are being earnings towards that amount, even upon the Debtor's own methods of keeping books, it is evident that the Consolidated Mortgage District is not receiving adequate, just or fair accounting of the income to which it is entitled.

(j) The Milwaukee & Northern properties, after all charges including those which Petitioner alleges to be improperly made against the Mortgage District, have for many years past shown full interest on the Consolidated Bonds, contributed excess earnings to the Debtor, and have contributed to the earnings of the lines of the Debtor not subject to the Milwaukee & Northern mortgages, aggregating, for instance, in the year 1934, the sum of $509,000.

(k) The excess earnings of the Milwaukee & Northern Mortgage District have not been separately computed or sequestered, and the Plan accords no recognition to the Milwaukee & Northern Consolidated bondholders for the excess earnings so received and retained by the Debtor.

(l) The basis of computing the earnings applicable to the Consolidated Mortgage District has not been demonstrated to be fair, correct or equitable.

4. The Consolidated Bonds should either (a) be paid off in cash, or (b) be permitted to remain undisturbed as to lien, with the addition of the personal obligation of the reorganized company, or (c) should receive new prime first mortgage bonds for 100% of their claims.

5. The Commission assumes, without adequate support in the record, that the treatment of the Consolidated Bonds and of the General Mortgage Bonds of the Debtor should be equal,—whereas the Consolidated Mortgage District is bonded at a very much less rate per mile than the General Mortgage District, and the earnings of the Consolidated Mortgage District are, on a true basis, much higher.

6. Petitioner, in order to make its position brief, 633 has detailed only the foregoing objections, but requests and reserves the right to file additional, supplemental and other objections and memoranda as to the Court may seem just and proper.

Dated, July 29, 1940.

Respectfully submitted,
Anglo-Continentale Treuhand, A. G.,
Petitioner.
By Sabath, Perlman Goodman & Rein
and Guggenheimer & Untermyer,
Its Attorneys.

634 And on, to wit, the 31st day of July, A. D. 1940, came Ida E. Herschensohn et al., by their attorneys and filed in the Clerk's office of said Court their certain OBJECTIONS in words and figures following to wit: Filed July 31, 1940.

635 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—50463)

Now comes Ida E. Herschensohn and Herbert L. Herschensohn, her husband, claimants, whose claims on account of personal injuries sustained by Ida E. Herschensohn because of the unsafe maintenance by the Debtor of its depot in the City of Milwaukee, Wisconsin, have been allowed Ten Thousand Dollars ($10,000.00) and Three Thousand Dollars ($3,000.00), respectively, and object to the modified plan of reorganization of the Debtor as proposed by the Interstate Commerce Commission, now before this Court, for the following reasons:

1. The same does not make provision for the payment of claims for personal injury and property damage occurring through the acts of commission or omission by the Debtor in full as current liabilities.

2. The treatment of such claims as general claims without any priority as to payment is inequitable and unjust.

Dated at Milwaukee, Wisconsin, July 30, 1940.

Ida E. Herschensohn and Herbert L. Herschensohn,
By A. L. Skolnik,
Their Attorney.

Filed July 31, 1940.

636 And on, to wit, the 31st day of July, A. D. 1940, came the Executive Committee of the Mutual Savings Bank Group by its attorneys and filed in the Clerk's office of said Court its certain Statement of Position and Claim for Equitable Treatment in words and figures following, to wit:

637 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—60463) * * *

STATEMENT OF POSITION AND CLAIM FOR EQUITABLE TREATMENT OF THE EXECUTIVE COMMITTEE OF MUTUAL SAVINGS BANK GROUP.

1. This Statement of Position and Claims for Equitable Treatment is filed pursuant to order of the Court, dated June 21, 1940, on behalf of the Mutual Savings Bank Group for Chicago, Milwaukee, St. Paul and Pacific Railroad Bonds (hereinafter called the "Mutual Savings Bank Group"), by the Executive Committee of the Group, with respect to the Plan of Reorganization for the Debtor that has been certified to this Court by the Interstate Commerce Commission in accordance with its report and order, dated February 12, 1940, as modified by its supplemental report and order, dated June 4, 1940.

The mutual savings banks of the country own approximately $30,000,000 principal amount of securities of the Debtor. Of these, the 157 mutual savings banks which now comprise the Mutual Savings Bank Group hold $26,640,800 principal amount of securities of the Debtor as follows:

Issue	Par Value
C. M. & St. P., General Mortgage Bonds	$16,510,000
Milw. & Northern, First Mortgage Bonds	333,000
Milw. & Northern, Consol. Mortgage Bonds	932,000
C. M. St. P. & P., 50-year Mortgage Bonds	1,879,800
C. M. St. P. & P., Conv. Adj. Mortgage Bonds	6,579,000
Southern Indiana, First Mortgage Bonds	343,000
Equipment Trust Certificates	64,000
Total	$26,640,800

2. On February 12, 1940, the Commission rendered its report and order approving a plan of reorganization for the Debtor. The position of the Executive Committee of the Group before the Commission with respect to the approved plan was that its major provisions were sound and acceptable and accorded with the evidence before the Commission but that in certain respects modifications were essential. Accordingly, a petition for modifications was filed by the Executive Committee of the Group on April 12, 1940, and after argument, the Commission modified its Plan in certain particulars by a supplemental report and order, dated June 4, 1940. Thereafter, the Commission certified the plan approved in said supplemental report and order to the Court. The essential provisions of a plan for the Debtor have thus been provided in accordance with the provisions of Section 77 of the Bankruptcy Laws, as amended.

3. As a practical matter, all of the definitive provisions of the plan and all of the documents necessary to its consummation are not specified. The Commission, in its report and order, has fully recognized that there are provisions in the plan that may require construction by the
638 Court and that it may be necessary for the Court to cure defects, supply omissions, or reconcile inconsistencies. In this respect Article Q of the supplemental order provides:

> "The construction of the plan by the court shall be final and conclusive. The court may cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient to carry out the plan effectively."

The details of the plan and the mechanics of its consummation are left to the reorganization committee, subject to the approval of the Court. Article N of the supplemental report provides in part as follows:

> "The reorganization committee shall determine the method of carrying out the plan, subject to approval by the court, and the form, except as herein otherwise expressly provided, and the provisions of all mortgages, bonds, coupons, by-laws, stock certificates, and all other instruments necessary or desirable in carrying out the plan."

These provisions constitute an adequate and appropriate means of supplying any of the details incidental to the

essential features of the plan that may be required for its confirmation.

4. The Executive Committee of the Group proposes from time to time, as the occasion therefor may arise, to make such suggestions to the Court and to the reorganization committee as it may deem necessary or desirable respecting the definitive provisions of the plan, the terms of the documents essential to its consummation, the correction of any defects, the supplying of any omissions and the reconciliation of any inconsistencies, all in the manner provided in the plan.

5. The Executive Committee of the Group desires to cooperate in the attainment of a prompt reorganization, believing it to be in the best interests not only of the securities held by the members of the Group but likewise in the interests of all creditors and in the interests of the public. It believes that this end can best be served by cooperation of all parties concerned in a prompt submission of the plan to the security holders and the early consummation of the reorganization. Consequently, the Executive Committee of the Group, as its claim for equitable treatment under the order of June 21, 1940, respectfully requests that the Court shall approve the plan certified by the Commission and, pursuant to the provisions of Section 77 (e), shall provide for a prompt submission of the plan to the creditors entitled to vote thereon.

It is requested that the foregoing statement be considered as without prejudice to the right of the Executive Committee of the Group to be heard on any or all matters coming before the Court.

Dated July 30, 1940.

Respectfully submitted,

Executive Committee of the Mutual Savings Bank Group,

By Fred N. Oliver,

Attorney.

Oliver & Donnally,
Attorneys for the Group,
110 East 42d Street,
New York, New York.

Fred N. Oliver,
Willard P. Scott,
Of Counsel.

642 And afterwards, to wit, on the 1st day of August, A. D. 1940, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit: Entered Aug. 1, 1940.

643 Order No. 696.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER.

This cause coming on to be heard upon the petition of Girard Trust Company, as substituted trustee and as trustee, as hereinafter set forth, for leave to intervene specially, and it appearing to the Court that all parties of record have been duly served with notice of this hearing, and the court being fully advised in the premises;

It Is Hereby Ordered, Adjudged and Decreed that Girard Trust Company, substituted trustee under Deed of Trust Dated February 1, 1901, of The Southern Indiana Railway Company, and trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute & Southeastern Railway Company, be and it is hereby granted leave to intervene specially in these proceedings for the purpose of objecting to the jurisdiction of this court to take any action affecting the bonds secured by the mortgages of which it is substituted trustee and trustee, as aforesaid, or any action affecting the said mortgages, for the purpose of objecting to the rejection or modification of the lease dated July 1, 1921, between the Chicago, Terre Haute & Southeastern Railway Company and the Chicago, Milwaukee, St. Paul & Pacific Railway Company (the debtor's predecessor), and for the purpose of objecting to the confirmation of the plan of reorganization of the debtor promulgated by the Interstate Commerce Commission under its report and order of June 4, 1940, in so far as it affects the said bonds or the said lease.

And it is further Ordered, Adjudged and Decreed that Girard Trust Company as substituted trustee and trustee, as aforesaid, shall have the right to receive notices of hearings on and file motions, pleadings and other papers in connection with the matters hereinbefore set forth.

Barnes,

Dated Aug. 1, 1940. *Judge.*

Filed Aug. 1, 1940. 644 And on, to wit, the 1st day of August, A. D. 1940, came the Girard Trust Company by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit:

645 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463).

Objections of Girard Trust Company, Substituted Trustee Under Deed of Trust Dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee Under Supplemental Mortgage Dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company, to the Modified Plan of Reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company Promulgated by the Interstate Commerce Commission Under Its Report and Order of June 4, 1940, and Claim of Girard Trust Company, Substituted Trustee, and Trustee aforesaid, for Equitable Treatment.

Girard Trust Company, Substituted Trustee under Deed of Trust dated February 1, 1901, of The Southern Indiana Railway Company (hereinafter called "Southern Indiana"), and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company (hereinafter called "Terre Haute"), respectfully shows:

A. That Girard Trust Company, as Substituted Trustee and Trustee, as aforesaid, has filed its petition for leave to intervene specially in these proceedings, for the purposes set forth in its said petition.

B. Girard Trust Company represents that it is a party in interest within the meaning of the Order of this Court herein entered on June 21, 1940, in that it is Substituted Trustee under a Deed of Trust dated February 1, 1901, of the Southern Indiana, and Trustee under a Supplemental Mortgage dated November 30, 1910, of Terre Haute, said indentures securing an issue of First Mortgage 4% Gold Bonds of Southern Indiana, the covenants in which indentures, including the payment of interest on and principal of said bonds, have been assumed by the Debtor in the lease of the lines and properties of the Terre Haute, including the lines and properties of the Southern Indiana, to the Debtor's predecessor, the said lease having been taken

over and assumed by the Debtor in 1928 in the proceedings for the reorganization of the Debtor's predecessor.

C. Girard Trust Company, as Substituted Trustee and Trustee, as aforesaid, and in behalf of the holders of bonds of the Southern Indiana, presents herewith and files its objections to the Modified Plan of Reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, the Debtor herein, and its claims for equitable treatment for said bondholders.

646 **Objections.**

1. The Modified Plan of Reorganization for the Debtor, promulgated by the Interstate Commerce Commission pursuant to its Report and Order of June 4, 1940, is not fair and equitable to the Southern Indiana bondholders, does not afford due recognition to the rights of said bondholders, designates unfairly in favor of classes of creditors of the Debtor as against the Southern Indiana bondholders, and does not conform to the requirements of law regarding the participation of the Southern Indiana bondholders and of the creditors of the Debtor in the following respects:

(a) It requires the holders of bonds of the Southern Indiana to consent to a reduction of their fixed interest from 4% to 2¾%, to which is to be added another 1¼% of interest if the additional 1¼% be earned by the reorganized Debtor in addition to 4½% on the reorganized Debtor's proposed new General Mortgage Income 4½% Bonds, of which in excess of $57,000,000 principal amount are to be issued, in spite of the fact that the Terre Haute earnings, including those of the Southern Indiana, available for interest in 1936—designated by the Interstate Commerce Commission in its report as a not unusually favorable period—amounted to $2,990,126, or nearly three times the interest requirements of the Terre Haute (including those of Southern Indiana) amounting to $1,023,580 on all its outstanding bonds (including those of the Southern Indiana), if coal hauled over the Terre Haute for the Debtor's own use be charged for at regular tariff rates, or, if charged for on a "cost of service" basis, $2,040,187, or nearly twice the interest requirements of the Terre Haute (including the Southern Indiana) on all its bonds outstanding in the hands of the public. The unfairness of the Plan, and its lack of equity as to the Southern Indiana bondholders, is further disclosed by the fact, among others, that the mortgage district upon which the Southern Indiana bonds are

secured produced in 1938 earnings available for interest of about 2.4 times its interest charges.

(b) It requires them to consent to a waiver of the claim of the Terre Haute against the Debtor for equipment vacancies under the terms of the Terre Haute mortgages (including the mortgage of the Southern Indiana), and of the said lease estimated at about $5,000,000 as of June 30, 1935, and being about $7,106,149 as of December 31, 1937, in spite of the fact that the possession and operation of the Terre Haute (including the Southern Indiana) by the Debtor and its predecessor during the years 1921 to 1937 was a source of profit to the Debtor and its predecessor to the extent of approximately $27,000,000, if the haul of the Debtor's coal by the Terre Haute (including the Southern Indiana) be charged for and computed on the basis of regular tariff rates.

(c) It requires the rejection of the said lease unless substantially all of the bondholders of the Terre Haute (including the Southern Indiana) do not consent to the Plan, in spite of the fact that the lease is profitable to the Debtor. The provisions in the Plan, which are enumerated in article "G" of the Order of the Interstate Commerce Commission dated June 4, 1940, are so unfair and inequitable to Terre Haute's bondholders (including the bondholders of Southern Indiana), that in effect it amounts to a rejection of the lease.

(d) It seeks to force a consolidation of the profitable Terre Haute (including the Southern Indiana) with the bankrupt Debtor in these proceedings, in which neither the Court nor the Commission has jurisdiction over the Terre Haute or any of its subsidiaries (including the Southern Indiana) for the reason that no petition under Section 77 of the Bankruptcy Act has been filed by or against them, nor are they in receivership in any State or Federal
647 Court, nor has any proceeding been begun pursuant to the appropriate provisions of the Interstate Commerce Act for the consolidation of the Terre Haute and its subsidiaries (including the Southern Indiana) with the Debtor.

(e) No provision is made in the Plan for the satisfaction of the claim of the Terre Haute and its subsidiaries (including the Southern Indiana) against the Debtor for the $5,000,000 more or less of equipment vacancies existing as of June 30, 1935, nor for the replacement by the Debtor's trustees of the equipment vacancies which have accrued since June 30, 1935, to date of consummation of the

Plan, nor for payment to the Terre Haute and its subsidiaries (including the Southern Indiana) of the values thereof aggregating in excess of $2,000,000 more.

(f) It seeks to compel that the bondholders of the Terre Haute (including the Southern Indiana) to consent to what amounts to a reduction of rental under said lease with consequent reduction of interest on their bonds, so as to enable the reorganized Debtor to pay more interest on the new bonds which it is proposed shall be issued to the Debtor's bondholders and creditors in exchange for their claims, despite the facts that the lease is profitable to the Debtor and that the Terre Haute has not failed in the due performance of the terms and conditions provided in the lease to be performed by it.

(g) It does not conform to the requirements of the law regarding the participation of the various classes of creditors of the Debtor, assuming but not admitting the bondholders of the Terre Haute (including the Southern Indiana) to be such creditors, in that such law does not permit junior or general creditors of a bankrupt to participate in the earnings of property covered by a first mortgage until the holders of the first mortgage are satisfied in full for interest and principal, whereas the Plan would take earnings of the properties subject to the first mortgages securing the bonds of the Terre Haute (including the Southern Indiana), and pay them to junior or other creditors.

Claim for Equitable Treatment.

1. In order to afford fair and equitable treatment to the Terre Haute and its security holders, including those of the Southern Indiana, said Modified Plan of Reorganization should be disapproved by the Court in respect of the matters affecting the Terre Haute, including the Southern Indiana, and its bondholders covered by the foregoing objections. The claims of the said Substituted Trustee and Trustee for Southern Indiana bondholders for fair and equitable treatment are as follows:

(a) That the existing lease dated July 1, 1921, of the lines of railway and properties of the Terre Haute (including those of the Southern Indiana) to the Debtor be adopted by the new Company.

(b) That the Debtor's trustees and/or the new company make good, in kind, the equipment vacancies existing under said lease, and under the mortgages securing the

bonds of the Terre Haute (including the Southern Indiana), as of June 30, 1935, and which have accrued and shall accrue up to the date of consummation of the Plan.

(c) That the Debtor's trustees be required either to pay the rent reserved in said lease, including the replacement of equipment vacancies, or to account and pay to the Terre Haute and its subsidiaries (including the Southern Indiana) the earnings of the Terre Haute properties
648 (including those of the Southern Indiana) after payment of the expenses thereof.

(d) That the earnings of the Terre Haute (including those of the Southern Indiana) be segregated and placed in a separate fund, together with the net earnings of the Terre Haute (including those of the Southern Indiana) since June 30, 1935, for the benefit of the holders of the bonds of the Terre Haute (including the Southern Indiana) to make good the defaults of the Debtor's trustees in the payment of rental, including the replacement of equipment vacancies as aforesaid, and to provide means, because of the Debtor's defaults and of the defaults of the Debtor's trustees under said lease for the payment of the bonds of the Terre Haute (including those of the Southern Indiana) when the same fall due.

(e) This objector proposes to join with the Committee for the protection of holders of Terre Haute bonds (including those of the Southern Indiana) in presenting these objections, and accordingly joins in the statement contained in paragraph 4 on page 9 of the objections filed in behalf of the said Committee, that a continuation of the hearings commencing on September 4, 1940, will be requested so as to enable this objector in conjunction with the said Committee to make a further study which will enable the Court to have before it such information as may be necessary to pass upon these objections and those of the said Committee, and upon said Plan.

Wherefore, Girard Trust Company, in behalf of the holders of First Mortgage 4% Gold Bonds of the Southern Indiana, secured by Indentures, and for itself as Substituted Trustee and Trustee, as aforesaid, declines to consent to the modifications of said bonds and mortgages securing them, and of the said lease, proposed by article "G" of the Interstate Commerce Commission's order of June 4, 1940, (Mimeo. pp. 18 to 21), and prays for an Order declaring that the existing lease dated July 1, 1921, shall be adopted by the new company, that the said Modified Plan in so far as it recommends the rejection and modification

of said lease, is not fair and equitable to the Terre Haute's bondholders (including those of the Southern Indiana), that the said Modified Plan discriminates unfairly in favor of the Debtor's creditors as against holders of the bonds of the Terre Haute (including those of the Southern Indiana), and does not conform with the requirements of law regarding participation of the said bondholders in the property and earnings of the Terre Haute (including the Southern Indiana), and in the property and assets of the Debtor, and referring the proceeding back to the Interstate Commerce Commission for further action with appropriate instructions to the effect that there is no basis in law or in equity for the rejection or modification of the Terre Haute's lease, since said lease is not burdensome to the Debtor, and since Terre Haute is not in default under the lease, and further that there is no basis in law or in equity for requiring the bondholders of the Terre Haute (including those of Southern Indiana) to agree to the modifications of their bonds, of the mortgages securing them, or of the said lease as provided in article "G" of the Order of the Interstate Commerce Commission herein dated June 4, 649 1940, and for such other and further relief in the premises as equity requires.

Dated Philadelphia, Pennsylvania, July 29, 1940.

Respectfully submitted,
Girard Trust Company,
By George H. Stuart,
3rd Vice President,
Substituted Trustee under Deed of Trust dated February 1, 1901, of the Southern Indiana Railway Company, and Trustee under Supplemental Mortgage dated November 30, 1910, of Chicago, Terre Haute and Southeastern Railway Company.

Bell, Boyd & Marshall, Esqs.,
135 S. La Salle Street,
Chicago, Illinois,
Barnes, Myers & Price, Esqs.,
1601 Morris Building,
Philadelphia, Pa.,
Counsel for Girard Trust Company, Substituted Trustee and Trustee, as aforesaid.

Filed Aug. 1, 1940. 650 And on, to wit, the 1st day of August, A. D. 1940, came the Trustees of Princeton University by their attorneys and filed in the Clerk's office of said Court their certain objections, in words and figures following, to wit:

651 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Objections of the Trustees of Princeton University, New York University, Robert Winthrop, Edgar Palmer, as Trustee, Charles M. Wood, E. Sohier Welch and George E. Brown, as Trustees, Consolidated Investment Trust, Leo Wallerstein and United States Trust Company as Trustee For Individual Beneficiaries, Owners of General Mortgage Bonds of the Chicago, Milwaukee & St. Paul Railway Company to a Plan of Reorganization of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company.

The above named Bondholders, bona fide owners of $2,181,000 of the General Mortgage Bonds of the Chicago, Milwaukee & St. Paul Railway Company, object to the Plan for reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company proposed by the Interstate Commerce Commission, on the ground that it is unjust, unfair and inequitable and discriminates against these Objectants as owners of General Mortgage Bonds in favor of the claims of other classes of creditors, some of which are inferior and subordinate to the lien of the mortgage which secures the General Mortgage Bonds and that the proposed Plan does not comply with Subsection (b) of Section 70 of the Bankruptcy Law, is not fair and equitable, does not afford due recognition to the rights of the class of creditors to which these objecting bondholders belong, it discriminates unfairly in favor of other classes of creditors and will not conform to the requirements of the law of the land in respect to the matters set forth in each of the following objections and deprives these objecting Bondholders of their constitutional rights. The Objections are specifically as follows:

1. The Interstate Commerce Commission has made in its report a finding that the limitation of the fixed charges of the system at approximately $4,269,654 is reasonable and

proper. This finding is without evidence to support it. It is arrived at by deducting from the probable prospective earnings distributable for fixed charges (namely, $6,769,-454) the mandatory Additions and Betterments Fund for capital expenditures amounting to $2,500,000, which is in violation of Section 77 (b) (4) and of Section 77 (e) of the Bankruptcy Act, and is not fair or equitable to these objecting bondholders.

2. The Interstate Commerce Commission has found in substance that the prospective earnings of the system as a whole distributable for fixed charges amount to at least $6,769,654.00 and has provided for the issuance of fixed interest bonds in the sum of only $63,923,171.00 (of which $10,000,000.00 is to be issued to provide for reor- 652 ganization expenses, working capital; Additions and Betterments, leaving only about $54,000,000.00 to be issued to the lienors) on which the fixed charges (together with fixed interest on Terre Haute bonds), amount to $4,-269,654.00. The remaining $2,500,000.00 of minimum prospective earnings is to be applied to an Additions and Betterments Fund and to be used for capital expenditures for which bonds might be issued. This is in violation of Section (b) of the Bankruptcy Act.

If that $2,500,000.00 were capitalized at 4%, it would permit the issuance of $62,500,000.00 additional first mortgage bonds, which should be distributed to the classes of creditors entitled thereto and by far the greater part of them should go to the holders of General Mortgage Bonds.

3. The Plan provides that the holders of General Mortgage Bonds shall receive only 25% of the amount of their claims for principal and interest in fixed interest first mortgage bonds or a total of approximately $39,000,000.00 out of a total issue of about $64,000,000.00, although the General Mortgage is a first lien on more than 6,000 miles of railroad (and equity in equipment, having a depreciated value of about $49,000,000.00, as of June 30, 1935) which the Commission describes as "the heart of the system", which produces about 71% of the revenue of the system and about 88% of the net income, for which the Commission finds the elements of value for rate making purposes to be over $359,000,000.00 (more than 258% of the face value of the General Mortgage) and which has consistently since the making of the mortgage in 1889 more than earned the interest on the General Mortgage bonds. This allocation is

unfair, inequitable and unlawful and discriminates against these Objectants in favor of other classes of creditors.

4. Not only are these objecting bondholders to receive only 25% of their claim in first mortgage bonds, but the plan provides that the new First Mortgage shall be unlimited in amount so that the subordinate securities to be given to these General Mortgage bondholders for the remaining 75% of their claim will be subject not only to the amount of first mortgage bonds to be presently issued but also to any amount of bonds which may hereafter be issued to finance new enterprises which might or might not prove profitable. This is unjust, unfair, inequitable and not in accordance with the law of the land.

5. Under the guise of reducing the fixed charges to an amount which can be paid out of the minimum expected earnings, the plan not only reduces the fixed interest to be received by these General Mortgage bondholders but (by requiring them to take subordinate securities for 75% of their claims instead of contingent interest bonds secured as to principal by the new first mortgage, as is proposed for the Terre Haute bonds) takes from them the security for 75% of their principal which is unfair, unjust, inequitable and unlawful, and whether or not it be claimed that this is to be done for the benefit of the public then it is in violation of the Fifth Amendment to the Constitution of the United States.

6. The Plan provides that the new first mortgage shall be a lien not only on the property covered by the present General Mortgage, but shall also include the property known as "lines west" (the extension running from the Missouri River to the Pacific Coast) which property the Interstate Commerce Commission as found to have no past, present or prospective earning power, which has been operated at a deficit which has been paid and (under the Plan) must be paid hereafter out of the earnings of the property covered by the General Mortgage, which deficits, together with the interest on $106,000,000.00 50 year 5% mortgage on the "lines west", have been the cause of
653 the financial difficulties of the system as a whole. The "lines west" were constructed and acquired long after the making of the General Mortgage. This plan deprives these Bondholders of their first lien on a valuable and productive property on the credit of which they loaned their money and bought the bonds and this Plan proposes to de-

prive them of the greater part of their lien on that property to make up the deficits incurred by the "lines west" which are subject to the 50 year bonds, which is inequitable, unfair and unlawful.

7. The proposed Plan provides that these General Mortgage Bondholders shall receive 35% of their claims in 4½% income bonds, Series A (secured by a subordinate mortgage on the whole system including the unprofitable "lines west"), interest on which is payable only if and as earned after payment of interest on the first mortgage bonds and also $2,500,000.00 into the mandatory Additions and Betterments Fund; 20% of the amount of their claims in Series B income bonds (secured by the same subordinate mortgage), the interest on which is payable only if earned after payment of the interest on the Series A income bonds and (in the discretion of the directors), after payment of an additional $2,500,000.00 into the Additions and Betterments Fund to be used for capital expenditures for which bonds should be issued; 20% of their claims in preferred stock upon which dividends can be paid only if earned over and above all the payments above specified and sinking funds. These provisions are unfair, unjust, inequitable and unlawful, in that they substitute for the 100% first lien of these bondholders upon the most valuable and productive part of the system a subordinate lien on a less productive property, in that they authorize a further and unnecessary expenditure from income (which should be applied to bond interest) for capital investments for the benefit of stockholders before the interest on the Series B bonds can be paid and for the further reason the Plan provides that 15% of the claims (amounting to over $19,000,000.00) of the 50 year 5% mortgage bonds, which the Commission has found to be subordinate to the claims of the General Mortgage Bondholders shall be payable in Series B income bonds, thus diluting the value and the security of the Class B income bonds to be issued to the General Mortgage Bondholders and thereby making the preferred stock to be issued to the General Mortgage Bondholders subordinate to that extent to the claim of the 50 year mortgage bonds. The Plan provides that 60% (over $76,000,000.00) of the claims of 50 year 5% Mortgage Bondholders be paid in preferred stock, thereby diluting the value of the preferred stock to be issued to the General Mortgage Bondholders.

For the above reasons the Plan is unjust, inequitable,

discriminatory and not in accordance with the law of the land.

8. The Commission has not attempted to decide whether the "Pieces of Lines East" are subject to the first lien of the General Mortgage but has apparently made the claims of these General Mortgage bondholders in part subordinate to the claims of the 50-year bondholders on the assumption that the 50-year mortgage is a prior lien on the "Pieces of Lines East", and has not given due recognition to the rights of these objecting General Mortgage bondholders, and discriminates unfairly in favor of the holders of 50-year 5% bondholders.

9. The plan provides that the claim of the Reconstruction Finance Corporation of $11,947,164 shall be paid one hundred per centum in First Mortgage Bonds, thereby reducing the number of First Mortgage Bonds distributable to the holders of General Mortgage Bonds, but has not provided that the security held by the Reconstruction
654 Finance Corporation for this loan, shall be applied for the benefit of the General Mortgage bondholders. It provides that the First and Refunding Mortgage Bonds included in the collateral, which are a lien prior to the 50-year 5% Mortgage Bonds, be canceled, thereby promoting the lien of the 50-year 5% Bonds. The other security, which will be released, is not segregated by the plan for the benefit of the General Mortgage bondholders and, therefore, fail to comply with Section 77 (e) of the Bankruptcy Law.

10. Under the provisions of the Plan the amount of bonds to be distributed to those entitled to new first mortgage bonds is reduced by the provisions for the Terre Haute bonds, which will retain their present liens and receive fixed interest, which will have the effect of reducing the new first mortgage to be issued by about $20,000,000.00 leaving only about $39,000,000.0 to be issued to the General Mortgage Bondholders. The Terre Haute Bondholders will have 100% of their claims in fixed interest bonds (assumed by the New Company) as against 25% to be issued to the General Mortgage Bonds, although the Interstate Commerce Commission has found the elements of value of the 6,000 miles of railroad covered by the General Mortgage Bonds to be $359,000,000.00, or 258% of the face value of General Mortgage Bonds as against less than $21,000,000.00, for the 360 miles of the Terre Haute, or about 95% of the face value of its bonds, and although it has found

that if the Terre Haute lease be not affirmed, the Terre Haute property, whose earnings are largely from coal belonging to and used by the Milwaukee, the Terre Haute Bondholders would have an unsecured claim against the system, which would be payable in a small fraction of its face value in common stock and that if the lease were disaffirmed and if the Milwaukee bought its coal elsewhere, the Terre Haute would probably not earn enough to pay the interest on its bonds. The Plan is, therefore, unfair, unjust and inequitable, unlawful and discriminates against these objectants, who will lose 75% of their first lien, whose interest on 55% of their claim will be contingent and the principal of 55% of their claim will be secured by a subordinate mortgage, and as to 20% of their claim they will have no lien on anything and will receive full dividends only if and when the property shall earn more than $20,000,000.00.

Claim for Equitable Treatment.

This objectant claims equitable treatment which is not accorded it by the Plan; (1) that the holders of its bonds should retain the security of their principal and if it be found necessary to make a part of their interest contingent upon earnings they should receive contingent interest bonds secured by first mortgage—as is proposed for the Terre Haute Bondholders; (2) they should receive Fixed Interest Mortgage bonds in an amount fairly commensurate with the value and earnings capacity of the property subject to the General Mortgage; (3) that the provision for an Addition and Betterments Fund should be eliminated and the amount of the mandatory $2,500,000.00 portion thereof capitalized at 4 per cent per annum, or at such other rate as shall be found fair and equitable, and that such amount, namely $62,500,000.00 or such portion thereof as may be found fair and equitable, be included in the new First Mortgage and bonds thereunder to that amount given to the General Mortgage bondholders; that to whatever extent the amount of new Fixed Interest Mortgage bonds allotted to present General Mortgage bondholders shall fall short of the amount of principal and unpaid interest of their bonds, the General Mortgage bondholders should receive new Contingent Interest bonds secured by the same first mortgage and that none of such Contingent Interest bonds should 655 be issued or allotted except to the holders of General

Mortgage Bonds and of Milwaukee and Northern Mortgage Bonds; (4) that the payment of the interest on Terre Haute bonds be eliminated, that the corporation executing the mortgage to secure the fixed interest bonds be not burdened with the ownership or operation of the "lines west"; (5) and in whatever form or by whatever structure the reorganization be effected, that except only for $11,947,164 of Fixed Interest Mortgage bonds to be issued for the loans of the Reconstruction Finance Corporation, the $1,554,143 of fixed interest mortgage bonds to be issued for Milwaukee and Northern First Mortgage bonds and the $1,329,815 to be given for the Milwaukee and Northern Consolidated Mortgage bonds, the absolute priority of the principal and interest of General Mortgage bonds in right and lien be maintained unimpaired in the securities to be given for such bonds, failing which that this proceeding be dismissed and that the trustee of the General Mortgage be left free to foreclose.

Frederick J. Moses,
Attorney for Above Named Objecting Bondholders.
70 Pine Street,
New York City.

660 And on, to wit, the 1st day of August, A. D. 1940, came the Imperial Trust Company, et al. by its attorneys and filed in the Clerk's office of said Court its certain objections, in words and figures following, to wit: Filed Aug. 1, 1940.

661 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *

Objections of Imperial Trust Company, Limited, John Roth and Frances W. Keeler, Respectively, Holders of $90,000 Principal Amount of Milwaukee & Northern Railroad Company 4½% Consolidated Mortgage Bonds (Hereinafter Referred to as "Consolidated Bonds"), to the Modified Plan of Reorganization of Said Debtor, (Hereinafter Referred to as the "Plan"), Heretofore Approved by the Interstate Commerce Commission in Its Supplemental Report and Order Dated June 4, 1940 and Now Before This Court.

Now come Imperial Trust Company, Limited, John Roth, and Francis W. Keeler, respectively (hereinafter termed the "Objectors"), and in accordance with the provisions of Section 77 of the Bankruptcy Act, and Order of this Court dated June 21, 1940, and without waiving their right to urge additional objections, state below their objections to the Plan, and their claims for equitable treatment of themselves and the other holders of the Consolidated bonds outstanding, aggregating in principal amount $5,072,000.

The Plan, in so far as the holders of the Consolidated Bonds are concerned, is not fair, just and equitable, and is illegal in that it fails to afford due recognition to their rights, and discriminates unfairly against them in favor of other classes of creditors of the Debtor, in the following respects:

(a) The Plan does not afford due recognition to the rights and priorities of the holders of the Consolidated Bonds. This is so because it fails to give sufficient regard to the values of the physical properties pledged under the Consolidated Mortgage, securing the Consolidated Bonds as a first and second lien, and does not adequately allot, to the holders of the Consolidated Bonds, prime securities based upon such values and liens.

(b) The Consolidated Mortgage, as disclosed at page 18 of the Commission's Report, dated February 12, 1940, is a

first lien on approximately 268 miles of line situated north of Green Bay, and a second lien on the lines south of that point.

(c) In the said Commission's Report, it is also stated that the equipment vacancies, under the Consolidated Mortgage, up to June 30, 1935, were estimated to be in excess of $2,000,000. It is further stated that although some question was raised as to the meaning of the covenants of the mortgages with respect to the maintenance of a specific amount of equipment, counsel for the Debtor concedes that a default exists in this respect.

(d) At page 134 of said Report, it is stated that the 662 cost of reproduction of the property with respect to which the Consolidated Mortgage is a first lien, less depreciation, plus the value of lands and rights, as of December 31, 1935, was $8,223,131, and the corresponding sum for the property subject to the first lien of the Milwaukee & Northern First Mortgage and the second lien of the Consolidated Mortgage was $4,284,286.

(e) The principal amount of Milwaukee & Northern First Mortgage Bonds outstanding, as shown upon the appendix to said Report, is $2,117,000; and the principal amount of said Consolidated Mortgage Bonds outstanding, as shown upon said appendix, is $5,072,000. The Consolidated Mortgage therefore has a first lien (exclusive of equipment vacancies), according to said report, upon $8,223,131 of assets, and a second lien (subject to $2,117,000 of Milwaukee & Northern First Mortgage Bonds) upon $4,284,286, or an equity in the property covered by the first lien of the First Mortgage, of $2,167,286.

(f) In said Report, it is proposed to deprive the Consolidated Mortgage of its first lien on the aforesaid assets of $8,223,131, and of its second lien upon the aforesaid assets of $4,284,286, and to subject the same to a total of newly issued securities aggregating $58,923,171 of new First Mortgage Bonds, $57,256,669 of new General Mortgage Bonds, Series A, and $51,422,111 of new General Mortgage Bonds, Series B (or an aggregate of $167,601,951—see Appendix to said Report); and although the properties subject to said first lien (even without taking into account the value of the second lien) are worth substantially in excess of the entire amount of the Consolidated Bonds outstanding, it is proposed to allot to the Consolidated bondholders only 25% in new First Mort-

gage Bonds, 35% in new General Mortgage Bonds, Series A, and 20% in new General Mortgage Bonds, Series B,—the remaining 20% being allotted in new preferred stock.

(g) Objection is made that this procedure results in depriving the Consolidated bondholders of their property without due process of law, and without sufficient, adequate or reasonable compensation for the property of which they are thus deprived. While it is true that other properties are under the Plan likewise placed under the aforesaid new mortgages, the interest of the Consolidated Mortgage bondholders therein is greatly diluted; and, secondly, adequate recompense for the properties is not accorded to the Consolidated Mortgage bondholders. A junior mortgage position and a stock position for the greater part of the principal of these bonds is not an adequate legal substitute for a present first mortgage position, which is quite apparently more than adequately secured at present. At the very least, the Consolidated Mortgage bondholders are entitled to receive 100% in new First Mortgage Bonds, otherwise they are entitled to have their liens remain undisturbed, as at present, and to secure the direct obligation of the Reorganized Company to pay the principal and interest of their bonds, as the Debtor is their direct obligor now.

(h) Under the terms of the Consolidated Mortgage, and by law, the Consolidated Mortgage bondholders are entitled to continuing interest until their debt is paid. As to the proposed General Mortgage Bonds, said Report, limits accumulations to 1½% accumulated interest if unpaid. This results in depriving the Consolidated Mortgage bondholders of their right to continuing interest until their debt is paid, without compensation for the deprivation of such right.

(i) At page 154 of said Report, the Commission finds that the necessity for a voting trust for the new stock has not been demonstrated and thinks that the interest of the security holders will be safeguarded if the Debtor's proposals with respect to the manner of electing the new Board of Directors and with respect to the voting 663 rights of stockholders are followed. In the Commission's Supplemental Report, however, a voting trust for a term of five years is established for the preferred and common stockholders, with five voting trustees to be designated by the same interests that designated the members of the Reorganization Committee. While the provi-

sions in respect of the manner of creating the voting trust set forth in the Supplemental Report are an improvement over the proposals for a voting trust as originally submitted; nevertheless the Objectors submit that the security holders should be left free to elect their own representatives upon the Board, that no voting trust should be created (as originally found by the Commission) and that cumulative voting should be provided for.

(j) The Plan fails to provide for (1) payment of a certain amount (now approximately $3,000,000) for the benefit of the holders of Milwaukee & Northern Bonds, including the holders of the Consolidated Bonds, in reimbursement for the equipment vacancies under their Mortgages which the Debtor, in the proceedings before the Commission, has conceded is in default; or (2) in the alternative, allocation to the holders of the Consolidated Bonds, adequate prime securities to make up the amount of their share of the admitted default.

(k) Not only does the Plan fail to provide any measure of recompense whatever to the holders of the Consolidated Bonds for their loss through the equipment vacancies aforesaid, but, through the treatment accorded to them, it is evident that the Plan reflects its approval of the Debtor's improper practices of charging the Milwaukee & Northern Lines substantial and excessive rental for the substituted equipment furnished.

(l) The Plan provides for treatment to the holders of the Debtor's General Mortgage Bonds equal to that accorded to the holders of the Consolidated Bonds notwithstanding that the record, before the Commission, reveals that superior treatment to the holders of the Consolidated Bonds is fully justified and should be provided.

(m) The Commission apparently adopts the conclusion of the Institutional Investors Committee that the earnings coverage per $1,000 bond of the Consolidated Bonds is substantially the same as the earnings coverage per $1,000 bond of the Debtor's General Mortgage Bonds. This conclusion fails to take into account the fact that this supposed equality of earnings coverage was only arrived at by reducing the Debtor's segregated earnings attributable to the Milwaukee & Northern Lines by $125,000, as estimated by Mr. Walker of that Committee. As shown in competent testimony before the Commission, there is substantially no sound basis for such downward revision of earnings of the Milwaukee & Northern Lines and in fact such earnings

should be materially increased. If the segregation figures submitted by the Debtor be adopted, the comparative earnings coverage for 1936 for the Consolidated Mortgage was 1.74 times interest as against 1.16 times interest in the Debtor's General Mortgage Bonds. If the earnings of the Milwaukee & Northern Lines are adjusted upwards, as competent testimony indicated would be appropriate, the disparity of earnings coverage in favor of the holders of the Consolidated Bonds is proportionately increased.

(n) The basis used by the Debtor of computing the earnings applicable to the properties of the Consolidated Mortgage has not been demonstrated to be fair, correct or equitable. For instance, testimony of the Vice-President of the Debtor in the proceedings before the Commission, reveals that larger expenses have been charged by the Debtor against the Milwaukee & Northern Lines than these lines would have had to assume were they operated as an independent line. The result has been to improperly create alleged charges against the earnings of the proper-
664 ties under the Consolidated Mortgage and such earnings are therefore in fact greatly in excess of those reported by the Debtor.

(o) Furthermore, the record before the Commission reveals that the Milwaukee & Northern Lines were charged in 1936 by the Debtor, $146,944 for interest rental on system equipment which rental should be either (1) eliminated entirely on the ground that the system equipment presently assigned to the Milwaukee & Northern Lines should as a matter of law be determined to be subject to the liens of the Milwaukee & Northern Mortgages (to replace equipment vacancies as hereinabove referred to) or (2) reduced by at least $71,977 as a result of reducing the valuation of the equipment upon which the rental was based to accord with actual as against theoretical cost and depreciation thereof and also reducing the rate of rental charged from 5% to 4% on the valuation. If any part of such interest rental is eliminated, the interest coverage of the Consolidated Bonds will be proportionately increased.

(p) As a further basis of comparison, it has been shown that property coverage represented by the ratio between the Commission's valuation and bonded debt is $1,615 per $1,000 bonds for the Consolidated Mortgage first lien property or $2,040 per $1,000 bond if the $2,167,286 excess value of the First Mortgage District is included. Were the value of assigned system equipment included, the coverage would

be substantially increased. This compares with $24,787 bonded debt per mile represented by the Debtor's General Mortgage.

(q) Accordingly, the Plan is unfair and inequitable in that it provides for equality of treatment between the holders of these two bond issues which would result in discrimination in favor of the Debtor's General Mortgage Bondholders at the expense of the holders of the Consolidated Bonds. In treating with this phase of the plan, which appears to have its inception in a recommendation made by the Institutional Investors Group, it should be borne in mind that, although the institutions represented by that Committee hold Consolidated Bonds, their holdings of such bonds, in the aggregate, constitute only a relatively small percentage of the total bonds of the Debtor held by them. It is therefore apparent that the treatment of their holdings of Consolidated Bonds as proposed in the Plan, might satisfy them, considering their Consolidated Bonds as a minor part of their total creditor position whereas such proposed treatment is most inadequate and inequitable to other holders of Consolidated Bonds, including the Objectors herein, having little or no interest in the balance of the Debtor's system.

(r) The Plan wrongfully proposes that the Consolidated Mortgage should be cancelled and discharged. Such a proposal, if consummated, would effectually destroy the strong lien and strategic position of the holders of the Consolidated Bonds and remove any opportunity of the Milwaukee & Northern Lines becoming divorced from the Debtor's system, for separate operation, either independently or under a lease or operating agreement with either the new reorganized company of the Debtor, the Chicago and North-Western Lines or other connecting lines.

(s) The mileage covered by the Milwaukee & Northern Lines is shown by the record before the Commission to be strategically located, provided with adequate facilities and well maintained; and particularly desirable from the point of view of convenient independent operation, with small additional capital requirements of not exceeding 506,000 to provide normal working capital, materials, supplies, etc. The future prospects of the lines are highly promising and they originated and terminate and thus control a substantial proportion of their total freight traffic, which is well diversified and unusually free from excessive seasonal fluctuations.

665 (t) To cancel and discharge the Consolidated Mortgage, as proposed in the Plan, and substitute for the holders of the Consolidated Bonds, the meagre and discriminatory treatment proposed for them in the Plan would deprive these holders of their present adequate security and unique strategic position as potential owners of a valuable property capable of profitable independent operation.

(u) The Plan fails to provide for the holders of the Consolidated Bonds such treatment as the record before the Commission would justify as fair and equitable, namely, to leave the Consolidated Bonds undisturbed, with a guaranty of payment of the principal thereof and interest thereon by the new organized company, and to extend the maturity date thereof to January 1, 1949 and reduce the interest rate to 4%. This would substantially conform to the treatment provided for the holders of the Consolidated Bonds in the Debtor's original Plan of Reorganization.

(v) Any other treatment would be unjust and unfair and violative of the constitutional, legal and equitable principles which should be applied before any bondholder is deprived of his property.

Dated July 27, 1940.

Respectfully submitted,
Imperial Trust Company, Limited,
By Florence Bures,
(Corporate Seal) *Assistant Secretary,*
John Roth,
Francis W. Keeler,
Jack E. Bagon,
Attorney for Objectors,
475 Fifth Avenue,
New York, N. Y.
McDonald & Richmond,
Attorneys for Objectors,
7 South Dearborn St.,
Chicago, Illinois.

Certificate of Service.

I hereby certify that copies of the foregoing objections have been served by mail or by personal delivery on the attorneys for all the parties to this proceeding.

Dated July 31, 1940.

Jack E. Bagon.

Filed Aug. 1, 1940. 656 And on, to wit, the 1st day of August, A. D. 1940 came the Mercantile National Bank of Chicago by its attorneys and filed in the Clerk's office of said Court its certain Suggestions to the Modified Plan of Reorganization in words and figures following, to wit:

657 In the District Court of the United States.

* * (Caption—60463) * *

Suggestions of Mercantile National Bank of Chicago and Benjamin H. Rubenzik, as Successor Trustees Under the Indenture of Trust of the Bedford Belt Railway Company Dated June 1, 1898, Securing Bedford Belt Railway Company First Mortgage 5% Bonds, to the Modified Plan of Reorganization of the Chicago, Milwaukee and St. Paul Railroad Company Now Before the Court, and Request for Equitable Treatment.

To the Honorable Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

Come now Mercantile National Bank of Chicago and Benjamin H. Rubenzik, as Successor Trustees under the Indenture of the Bedford Belt Railway Company, dated June 1, 1898, securing First Mortgage 5% Gold Bonds, appearing specially pursuant to the order of Court heretofore entered herein on June 21, 1940 and submit the following suggestions for equitable treatment:

1. That in April, 1898, the Bedford Belt Railway Company duly authorized the issuance of its bonds to be known as First Mortgage Gold Bonds, in the aggregate principal amount not exceeding Five Hundred Thousand Dollars ($500,000), maturing July 1, 1938, and bearing interest at 5% per annum, payable semi-annually, and the execution of an Indenture to secure payment thereof; that in pursuance of said authority, the Bedford Belt Railway Company duly executed and delivered to the Equitable Trust Company of Chicago, as Trustee, its Indenture dated June 1, 1898 (hereinafter sometimes called the "Indenture"), to secure the payment of the principal and interest of all of the bonds at any time issued or outstanding thereunder; that the Mercantile National Bank of Chicago and Benjamin H. Rubenzik are now the Successor Trustees under said Indenture.

2. That from time to time, since the execution of the Indenture, there was duly authenticated and delivered by the predecessors of said Trustees, as provided in the Indenture, Three Hundred Fifty Thousand Dollars ($350,000) principal amount of bonds, each bearing interest at the rate of 5% per annum. Said bonds were duly executed by the obligtor and duly delivered pursuant to the terms of the Indenture, and all thereof were duly issued and are now outstanding. Two Hundred Fifty Thousand Dollars ($250,000) of said bonds so issued are outstanding in the hands of the public and One Hundred Thousand Dollars $100,000) thereof were deposited with the corporate trustee under a first and refunding mortgage of the Chicago, Terre Haute and Southeastern Railway Company, un-
658 der the terms thereof, in exchange for an equal face amount of first and refunding bonds, and are now held by the said corporate trustee as security for first and refunding mortgage bonds of the Chicago, Terre Haute and Southeastern Railway Company pursuant to the terms of said first and refunding mortgage.

3. That on or about December 1, 1910, the Bedford Belt Railway Company conveyed all of its property of every kind and nature, real, personal and mixed, to the Chicago, Terre Haute and Southeastern Railway Company. Thereafter, on or about July 1, 1921, the Chicago, Terre Haute and Southeastern Railway Company leased substantially all of its properties to the Chicago, Milwaukee and St. Paul Railway Company, and, in and by said lease, Chicago, Milwaukee and St. Paul Railway Company assumed and agreed to pay the principal and interest of the Two Hundred Fifty Thousand Dollars ($250,000) First Mortgage 5% Gold Bonds of the Bedford Belt Railway Company outstanding in the hands of the public. On or about January 19, 1927, this Court entered a decree approving the reorganization plan of the Chicago, Milwaukee and St. Paul Railway Company. Under this reorganization plan, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the debtor herein, acquired substantially all of the assets of the Chicago, Milwaukee and St. Paul Railway Company and assumed the obligations of the Chicago, Milwaukee and St. Paul Railway Company under the lease dated July 1, 1921, between the Chicago, Terre Haute and Southeastern Railway Company, as lessor, and the Chicago, Milwaukee and St. Paul Railway Company, lessee, and thereby became obligated to pay the principal of and inter-

est on said Two Hundred Fifty Thousand Dollars ($250,000) 5% First Mortgage Gold Bonds of the Bedford Belt Railway Company outstanding in the hands of the public. That, since the acquisition aforesaid of the assets of the Chicago, Milwaukee and St. Paul Railway Company, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company has continuously been in possession of and operated the property of the Chicago, Terre Haute and Southeastern Railway Company, including the property of said Bedford Belt Railway Company.

4. That the said bonds of the Bedford Belt Railway Company matured on July 1, 1938; that prior to July 1, 1938, the trustees of the property of the Chicago, Milwaukee and St. Paul Railway Company filed a petition for instructions in respect to the maturity on July 1, 1938, of the bonds of the Bedford Belt Railway Company outstanding in the hands of the public in the amount of $250,000; that the Successor Trustees under said Indenture of the Bedford Belt Railway Company filed an answer herein asking that the bonds be paid at maturity by the Trustees of the property of the Debtor; that on June 28, 1938, the Honorable James H. Wilkerson, one of the judges of this court, entered a decree instructing the trustees of the property of the Debtor not to use the funds in the trust estate at this time and until further order of the Court for the purpose of paying the principal, or any part thereof, of the said First Mortgage Gold Bonds of the Bedford Belt Railway Company; that, until the further order of the Court, the Trustees of the Debtor were directed to make the semi-annual payments of interest on said bonds outstanding in the hands of the public; that the Court reserved full right at any time by such further orders in the premises as the Court may deem proper to amend, extend, limit, modify, or otherwise change or rescind said order.

5. That the modified plan of reorganization of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company filed herein on June 14, 1940 provides that the Indenture of the Bedford Belt Railway Company and the bonds is-
659 sued thereunder shall be modified in such manner as to provide for: (a) the extension of the maturity of the bonds; (b) the bonds to bear fixed interest at the rate of 2.75% per annum and contingent interest at the rate of 1.5% interest per annum, instead of the present fixed rate of 5%; (c) the holders of the bonds to waive equipment vacancies existing at the present time; (d) the new com-

pany, in the replacement of equipment retired after the effective date of the plan, to include equipment purchased under equipment trust under certain conditions; (e) the mortgages to contain appropriate provisions for the abandonment of such property of the Chicago, Terre Haute and Southeastern Railway Company as the Board of Directors may deem it to the interest of the system to abandon it; (f) the guaranty of the Chicago, Milwaukee and St. Paul Railway Company endorsed on the bonds to be voided and a new lease made between the Chicago, Terre Haute and Southeastern Railway Company, replacing the present lease between the Chicago, Terre Haute and Southeastern Railway Company and the Debtor, or in the alternative that if the plan is not accepted by substantially all of the Chicago, Terre Haute and Southeastern Railway Company bondholders, including the Bedford Belt Railway Company, the existing lease between the Chicago, Terre Haute and Southeastern Railway Company and the Debtor, together with the guaranty of the payment of the principal and interest of all of the Chicago, Terre Haute and Southeastern Railway Company mortgage bond issues, shall be rejected and such other appropriate adjustments made by the court as the court may deem necessary to put the plan into effect.

6. That the lease between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Chicago, Terre Haute and Southeastern Railway Company is profitable and advantageous to the Debtor and is not a burden upon the estate of the Debtor, and, in equity and good conscience, its terms and conditions should be carried out by the Debtor.

7. That neither the Chicago, Terre Haute and Southeastern Railway Company nor the Bedford Belt Railway Company has filed petitions for reorganization in these proceedings, and, accordingly, neither the Commission nor the Court has the power or authority to establish a plan of reorganization for the debtor which would alter or modify the terms of the Bedford Belt Railway Company bonds or the Indenture securing the same.

8. That said plan, in so far as Bedford bondholders are concerned, is inequitable because of the coercive nature of the offer made to said bondholders, in that it provides that unless said bondholders accept the modified plan of reorganization, the lease is to be terminated.

The undersigned Trustees, therefore, respectfully sug-

gest to the Court that the provisions contained in paragraph (G) of said modified plan of reorganization, respecting the Bedford Belt Railway Company bonds, should be rejected and that the Debtor should be required to carry out all the terms and conditions of said lease.

Respectfully submitted,
Mercantile National Bank of Chicago,
By J. E. O'Schaughnessy,
Vice President.
Benjamin H. Rubenzik,
As Trustees Aforesaid.
Gann, Secord, Stead and McIntosh,
Attorneys for Mercantile National Bank of Chicago and Benjamin H. Rubenzik, Trustees.

J. Walter Stead,
Frederick Secord,
Loy N. McIntosh,
John M. Boord,
Of Counsel.

Filed Aug. 1, 1940.

669 And on, to wit, the 1st day of August, A. D. 1940 came the Massachusetts Mutual Life Insurance Co., by its attorneys and filed in the Clerk's office of said Court its certain Statement of Joint and Several Objections in words and figures following, to wit:

670 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

Statement of Joint and Several Objections of Massachusetts Mutual Life Insurance Company and the Prudential Insurance Company of America, as Holders of Bonds of the Chicago, Terre Haute and Southeastern Railway Company, to Plan of Reorganization and of Claims for Equitable Treatment, and Motion that Proceedings Be Referred Back to the Interstate Commerce Commission for Further Action.

Comes now Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America, by their attorneys, Ernest S. Ballard and Minier Sargent, and jointly and severally object to the plan of reor-

ganization certified to this Court by the Interstate Commerce Commission and, pursuant to subsection (e) of section 77 of the Bankruptcy Act of 1898, as amended, file their joint and several objections to said plan and claims for equitable treatment, and move the Court to refer the proceedings back to the Interstate Commerce Commission for further action, and to said ends respectfully represent unto the Court as follows:

A. Massachusetts Mutual Life Insurance Company is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, carrying on business at No. 1295 State Street, City of Springfield, County of Hampden, Commonwealth of Massachusetts, and is the owner and holder of $200,000 principal amount of Southern Indiana Railway Company First Mortgage 4% Bonds and of $500,000 principal amount of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage 5% Bonds.

B. The Prudential Insurance Company of America is a corporation duly organized and existing under the laws of the State of New Jersey, carrying on business at No. 763 Broad Street, in the City of Newark, County of Essex, State of New Jersey, and is the owner and holder of $500,000 principal amount of Chicago, Terre Haute and Southeastern Railway Company First & Refunding Mortgage 5% Bonds and of $500,000 principal amount of Chicago, Terre Haute and Southeastern Railway Company Income Mortgage 5% Bonds.

C. The aforesaid bonds are secured by mortgages upon the properties of the Chicago, Terre Haute and Southeastern Railway Company. Said properties were leased to the debtor's predecessor in 1921 under an agreement whereby payment of the principal and interest of said bonds was assumed by the debtor's predecessor, and the aforesaid Income Mortgage 5% Bonds themselves were guaranteed as to payment of principal and interest by
671 the debtor's predecessor. The said lease and guaranty and all the obligations and covenants of the debtor's predecessor thereunder were taken over and assumed by the debtor in 1928 in proceedings for the reorganization of the debtor's predecessor.

D. The plan of reorganization for the debtor herein approved by the Interstate Commerce Commission by its report and order of June 4, 1940, and heretofore certified to

this Court, contains provisions affecting the rights of all holders of the above described bonds, and affecting the agreements, contracts and relationships now existing between said bondholders, the Chicago, Terre Haute and Southeastern Railway Company, and the debtor.

E. Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America (hereinafter called "these objectors") are therefore parties in interest in this proceeding within the meaning of the Order of this Court entered herein June 21, 1940, and pursuant to said order respectfully present the following objections to the aforesaid plan of reorganization and claims for equitable treatment.

Objections to Plan of Reorganization.

1. These objectors object to said plan because of its failure to provide that the reorganized company shall assume and adopt the lease of the properties of Chicago, Terre Haute and Southeastern Railway Company (hereinafter called "the Terre Haute"), made between the Terre Haute, as lessor, and the debtor's predecessor, the Chicago, Milwaukee and St. Paul Railway Company, as lessee, dated July 1, 1923, which lease was assumed and adopted by the debtor.

2. These objectors object to said plan because of its failure to provide either for the adoption or rejection of said lease prior to the submission of said plan to the debtor's creditors for acceptance or rejection.

3. These objectors object to the provisions of said plan, contained in paragraph G thereof, for rejection of said lease subsequent to confirmation of said plan upon the contingency set forth in said paragraph G.

4. These objectors object to said plan because of its failure to provide that the reorganized company shall assume the guaranty by the debtor of the payment of the principal and interest of the Terre Haute Income Mortgage 5% Bonds.

5. These objectors object to the provision of said plan, contained in paragraph G thereof, that upon the contingency set forth in said paragraph G the aforesaid guaranty shall be rejected.

6. These objectors object to the provision contained in paragraph G of said plan to the effect that in the event

rejection of the aforesaid lease and guaranty occurs, such rejection shall be as of the date of determination by the Court (subsequent to confirmation of the plan) that the provisions of said plan relative to the treatment of the Terre Haute bonds and the aforesaid lease have not been accepted by substantially all the holders of the Terre Haute bonds.

7. These objectors object to the provision of said plan, contained in paragraph M thereof, that the reorganized company "shall be deemed to have assumed the obligations under existing executory contracts (except the present lease of the Terre Haute and the guaranty of the Terre Haute income-mortgage bonds), which by their terms do not terminate at or prior to the conclusion of the reorganization proceedings and which shall have been affirmed by the bankruptcy trustees prior to confirmation of the plan."

8. These objectors object to said plan because of 672 its failure to make any provision for the payment, in the event of rejection of the aforesaid lease, to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate in the operation of the properties of the Terre Haute since the date of the filing of the debtor's petition for reorganization herein.

9. These objectors object to said plan for the reason that in determining its provisions the Commission has failed to consider or to make any findings with respect to the effect upon the financial ability of the reorganized company to put into effect and carry out the provisions of said plan in the event that payment to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate during the course of the proceedings from the operation of the Terre Haute properties shall become necessary by reason of rejection of the aforesaid lease.

10. These objectors object to said plan for the reason that in determining its provisions the Commission has failed to consider or to make any findings with respect to the effect on the financial ability of the reorganized company to put into effect and carry out the provisions of said plan in the event that the debtor's estate and the reorganized company are deprived of all future profits and revenues from the operation of the Terre Haute properties by reason of rejection of the aforesaid lease.

11. These objectors object to said plan for the reason that the ability of the reorganized company to put into ef-

fect and carry out said plan will be substantially impaired in the event by rejection of the aforesaid lease as provided in said plan, by reason of the resulting loss to the debtor's estate and to the reorganized company of all future profits and revenues from the operation of the Terre Haute properties, and by reason of the resulting loss to the debtor's estate and to the reorganized company of the cash which will be required to be paid to the Terre Haute on account of the profits derived by the debtor's trustees or the debtor's estate during the course of the proceedings from the operation of the Terre Haute properties.

12. These objectors object to each and all of the provisions of said plan, contained in paragraph G thereof, relating to the modification of the Terre Haute bonds and of the mortgage indentures securing the same, the execution of a new lease between the Terre Haute and the reorganized company, the submission of said provisions to the Terre Haute bondholders, for acceptance after confirmation of the plan by the Court, and the rejection of the existing lease between the Terre Haute and the debtor and of the guaranty of payment of principal and interest of the Terre Haute income mortgage bonds in the event of non-acceptance by said bondholders.

13. These objectors object to each and all of the provisions of said plan, contained in subparagraph (3) of paragraph L thereof, relating to the modification of the Terre Haute bonds and the execution of a new lease of the Terre Haute properties in the event that substantially all the Terre Haute bondholders agree to accept the provisions of the plan affecting their interests.

Claims for Equitable Treatment.

1. These objectors claim that the aforesaid lease of the properties of the Terre Haute should be assumed and adopted by the reorganized company, and that appropriate provision to that effect should be made in the plan of reorganization.

2. These objectors claim that the aforesaid guaranty of the payment of the principal and interest of the Terre Haute income mortgage bonds should be assumed and adopted by the reorganized company, and that appro-
673 priate provision to that effect should be made in the plan of reorganization.

3. These objectors further claim that, in the event the aforesaid lease is not adopted, said lease must be rejected

prior to the taking of the vote upon the plan of reorganization proposed for the debtor company to the end that any party or parties who may become creditors of the debtor by reason of such rejection shall be entitled to participate in the voting upon said plan pursuant to the statute.

4. These objectors further claim that, in the event said lease is rejected, such rejection must be made as of the date of the filing of the debtor's petition for reorganization herein, and that the plan of reorganization for the debtor herein must make appropriate provision for the payment to the Terre Haute of all profits derived by the debtor's trustees or the debtor's estate in the operation of said properties subsequent to said date.

WHEREFORE, Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America pray that the Court disapprove the plan of reorganization certified to the Court by the Interstate Commerce Commission, and move that the Court enter an order referring the proceedings back to the Interstate Commerce Commission for further action.

Respectfully submitted,
Massachusetts Mutual Life Insurance Company,
The Prudential Insurance Company of America,
By E. S. Ballard,
Minier Sargent,
Their Attorneys,
120 South La Salle Street,
Chicago, Illinois.

State of Illinois, } ss.
County of Cook. }

Minier Sargent, being first duly sworn, on oath deposes and says that he is the agent in this behalf of Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America; that he has read the foregoing statement of objections and claims for equitable treatment and that the same is true to the best of his knowledge, information and belief.

Minier Sargent.

Subscribed and sworn to before me this first day of August, 1940.

Frances C. Robertson,
Notary Public.

My commission expires April 18, 1942.

Filed Aug. 1, 1940.

666 And on, to wit, the 1st day of August, A. D. 1940, came the Guaranty Trust Co., by its attorneys and filed in the Clerk's office of said Court its certain objections in words and figures following, to wit:

667 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 60463) * *

OBJECTIONS OF GUARANTY TRUST COMPANY OF NEW YORK AND MERREL P. CALLAWAY AS FIFTY YEAR MORTGAGE TRUSTEES.

Now come Guaranty Trust Company of New York and Merrel P. Callaway (herein sometimes called the "Fifty Year Mortgage Trustees"), intervenors in this proceeding, as Trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925 (herein sometimes called the "Fifty Year Mortgage"), securing $106,395,096 principal amount of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty Year 5% Mortgage Gold Bonds, Series A, due February 1, 1975 (herein sometimes called the "5s of 75"), and object as follows to the modified plan of reorganization approved by the Interstate Commerce Commission in its Supplemental Order of June 4, 1940, and certified by the Commission to the Court on June 14, 1940:

1. To the inclusion of the mandatory portion of the Additions and Betterments Fund as a fixed charge.

2. To the allocation to the 5s of 75 of new securities of junior rank, and to the allocation to the 5s of 75 of only 15% of the claim thereon in new General Mortgage Income Bonds, Series B, 60% in new Preferred Stock and 25% in new Common Stock.

3. To the failure to afford due recognition to the value of the junior lien of the 5s of 75 on the Debtor's leasehold interest in Chicago, Terre Haute and Southeastern Railway Company or to the junior lien of the 5s of 75 on Chicago, Terre Haute and Southeastern Railway Company bonds and stock.

4. To the failure to afford due recognition to the junior lien of the 5s of 75 on the other securities pledged to secure the Debtor's First and Refunding Mortgage.

5. To the failure to give due recognition to the "earn-

ing power and all other relevant facts" relating to the 5s of 75, as required by Section 77 of the Bankruptcy Act as amended and by the law of the land.

6. To the failure at any stage in these proceedings to evolve a formula for the segregation of earnings that can serve as a proper basis for a major disruption of liens on a long-range basis.

7. To the use of inadequate data or unsound principles or both in the formula for the segregation of earnings with respect to:

(a) selection of a truly representative test period;
(b) freight revenues;
(c) other revenues;
(d) haul of company freight;
(e) operating expenses, and
(f) equipment rentals.

668 8. To the failure to make a study of the earnings of the properties subject to the lien of the General Mortgage.

9. To the failure to make a severance study or a contributive income study.

10. To the failure to give due consideration to the position and value of the Western Lines in the event of consolidation or of coordination of facilities.

11. To the failure to provide that the Sinking Fund for General Mortgage Income Bonds be applied equally to Series A and Series B thereof, or alternatively to provide a separate Sinking Fund for Series A and Series B thereof.

12. To the failure to accord the new Preferred Stock its proper characteristics or adequate protection with respect to:

(a) voting rights;
(b) future issuance of securities senior thereto; and
(c) conversion privileges.

13. To any treatment of the 5s of 75 that is not fair and equitable and does not conform to the requirements of the law of the land, in accordance with the provisions of Section 77.

The Fifty Year Mortgage Trustees hereby make claims for equitable treatment in accordance with the foregoing objections.

Wherefore, the Fifty Year Mortgage Trustees respectfully pray:

I. That the Court disapprove the modified plan of the

Commission as not according fair and equitable treatment to the holders of the 5s of 75.

II. That in any plan approved by the Court fair and equitable treatment be afforded the holders of the 5s of 75 in accordance with the foregoing objections and claims.

III. That the Fifty Year Mortgage Trustees be granted leave to supplement hereafter the foregoing objections and claims with such further and more detailed specification as may be deemed appropriate.

IV. That the Fifty Year Mortgage Trustees be granted such other and further relief as the Court may deem proper.

Dated: August 1, 1940.

Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees as aforesaid,

By Guaranty Trust Company of New York,

Arthur E. Burke,

Vice-President.

Davis, Polk, Wardwell, Gardiner & Reed,

15 Broad Street,

New York, N. Y.

Tenney, Harding, Sherman & Rogers,

120 South LaSalle Street,

Chicago, Ill.

Solicitors for Guaranty Trust Company of New York and Merrel P. Callaway as Trustees as aforesaid.

Edwin S. S. Sunderland,
Henry F. Tenney,
Thomas O'G. FitzGibbon,
Rober R. Leech,
George John Miller,
Counsel.

[Verification omitted in printing.]

678 And on, to wit, the 1st day of August, A. D. 1940 came the Group of Institutional Investors by Its attorneys and filed in the Clerk's office of said Court Its certain Statement of Position and Claim for Equitable Treatment in words and figures following, to wit: Filed Aug. 1, 1940.

679 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463) * *.

STATEMENT OF POSITION AND CLAIM FOR EQUITABLE TREATMENT OF GROUP OF INSTITUTIONAL INVESTORS.

This statement of position and claim for equitable treatment is filed pursuant to the order dated June 21, 1940, on behalf of the Group of Institutional Investors (hereinafter sometimes called the Group), holders of Chicago, Milwaukee, St. Paul and Pacific Railroad Company securities, with respect to the plan of reorganization for the debtor's property certified to this Court on June 14, 1940, by the Interstate Commerce Commission (hereinafter called the Commission), in accordance with its report dated February 12, 1940, and its supplemental report and order dated June 4, 1940. Member companies of the Group own bonds and equipment trust certificates of the debtor in the aggregate principal amount of $73,551,700, which are represented by the Group.

The Group strongly desires, and from the beginning has urged, a prompt reorganization of this property. Its own plan proposed before the Commission recognized the tremendous sacrifices which the secured creditors must assume in order to bring the road out of bankruptcy on an economically sound basis and within a reasonable time. After full and fair hearings which observed every possible requirement of due process, upon a very complete record, and with five sets of briefs, a proposed report of the Examiner, oral arguments before the entire Commission, and petitions to modify the plan initially approved by the Commission affording every interest the fullest opportunity to be heard, the Commission has certified to the Court a plan of reorganization for the debtor's property.

When the Group filed its initial brief before the Commission on May 28, 1928, it represented bonds of the Chicago, Terre Haute & South Eastern Railroad Company in the aggregate principal amount of $2,875,000, which

said bonds have now been withdrawn from representation by the Group.

The certified plan differs in many respects from the plan proposed by the Group and from its requested modifications of the plan initially approved by the Commission, both as to the reorganization of the debtor and as to the treatment to be provided for the four issues of bonds of the Chicago, Terre Haute & South Eastern Railroad Company under the prospective lease of the railroad of that Company. While as to points of difference, the Group prefers the provisions of its own plan and the modifications requested by it, yet in view of the long period in which this property has already been in bankruptcy, the full consideration given to the matter by the Commission, and the great desirability of an early reorganization, the
680 Group presently representing only system securities does not offer any specific objection to the plan.

The filing of this statement of position and claim for equitable treatment is without prejudice to the right of any member of the Group taking individual action, such as is authorized by the Group agreement, in respect to any feature or requirement of the plan, or in respect to any feature of the proposed modification of the Terre Haute lease and the Terre Haute securities.

The group also requests that the Court, either at the hearings on the plan or at any appropriate time prior to the plan's final consummation, shall "cure any defect, supply any omission, or reconcile any inconsistency" that may appear in the plan as certified "in such manner or to such extent as may be necessary or expedient to carry out the plan effectively" within the framework of the plan and without referring the proceeding back to the Commission, as permitted by the Commission's order (paragraph Q of Commission's order dated June 4, 1940).

We request that the foregoing statement be considered as without prejudice to the right of the Group and its members to be heard on any and all matters coming before the Court.

Respectfully submitted,
Group of Institutional Investors,
By Kenneth F. Burgess,
Its Attorney.

Sidley, McPherson, Austin & Burgess,
11 S. La Salle St.,
Chicago, Ill.,
Of Counsel.

And on, to wit, the 1st day of August, A. D. 1940 came the Debtor by its attorneys and filed in the Clerk's office of said Court its certain Objections to the Plan of Reorganization Certified to the Court by the Interstate Commerce Commission and statement of its claim for equitable treatment in words and figures following, to wit: Filed Aug. 1, 1940.

IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—60463). * *

OBJECTIONS OF THE DEBTOR TO THE PLAN OF REORGANIZATION CERTIFIED TO THE COURT BY THE INTERSTATE COMMERCE COMMISSION AND STATEMENT OF ITS CLAIM FOR EQUITABLE TREATMENT.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Debtor herein, hereby objects to the Plan of Reorganization promulgated by the Interstate Commerce Commission by its supplemental order dated June 4, 1940, and certified to this Court by said Interstate Commerce Commission on June 14, 1940 (hereinafter called "the certified Plan"), and in accordance with subsection (e) of Section 77 of the Act of Congress commonly known as the Bankruptcy Act, the Debtor hereby presents a statement in detail of its objections to said Plan of Reorganization and its claim for equitable treatment and to this end states and represents to the Court as follows:

I.

General Objections to the Commission's Certified Plan.

A. The Debtor objects to paragraph A of said order fixing January 1, 1939, as the effective date of the certified Plan and respectfully submits that the certified Plan should be made effective as of July 1, 1925, as the nearest convenient accounting date to the date of the filing of the petition herein and the fixation of rights thereunder, but if a later date is adopted the rights of the holders of new securities in income subsequent to July 1, 1935, should be adjusted retroactively to said date and their rights of participation in such income limited to what they would have received if the effective date had been July 1, 1935.

B. The Debtor objects to paragraph B of said order as the integral part of a Plan providing for the transfer of the Debtor's property to a reorganized Debtor or a new corporation on the terms set forth in said order of the Interstate Commerce Commission, which terms the Debtor avers are unfair, inequitable, discriminatory, and contrary to the requirements of the law of the land as hereinafter more particularly set forth.

C. The Debtor objects to paragraph C of said order, particularly to the under-capitalization of the reorganized Company as proposed by the Interstate Commerce Commission, and among the many grounds of objection to the proposed capitalization it hereby specifies:

(1) That said capitalization is less than the amount of capital invested in the Debtor's property under protection of the Fifth Amendment to the Constitution of the United States.

(2) That said capitalization is less than the amount of capital represented by the Debtor's property as valued by the Interstate Commerce Commission pursuant to Section 19a of the Interstate Commerce Act.

(3) That said capitalization is far less than the amount of capital represented by the Debtor's property if lawfully valued by the Interstate Commerce Commission pursuant to Section 19a of the Interstate Commerce Act.

(4) That said capitalization does not provide for creditors and stockholders of the Debtor who are entitled to participate in such a reorganization under the law of the land.

(5) That said capitalization does not represent a capitalization at a fair rate of the earning power of the Debtor and does not give weight to earnings of the Debtor in any fair test period or to its current earnings.

(6) That a Plan of Reorganization based upon such a capitalization is unfair and inequitable and does not afford due recognition to the rights of each class of creditors and stockholders, discriminates unfairly in favor of certain classes of creditors and does not conform to the requirements of the law of the land regarding the participation therein of the various classes of creditors and stockholders of the Debtor.

D. The Debtor objects to paragraph D of said order for the reason that the issue and distribution of the new securi-

ties provided for in the certified Plan is not a fair and equitable consideration for the cancellation of the existing stocks of the Debtor, together with all its mortgage bonds including bonds pledged.

E. The Debtor objects to paragraph E of said order on various grounds, including (but without limitation) the following:

(1) The 4% interest rate on the proposed Series A First Mortgage Bonds is too high and should be reduced to not to exceed 3½%, so as to permit an increased principal amount of such bonds to be issued without increasing the annual fixed interest charge thereon.

(2) The amount of the Series A First Mortgage Bonds, namely, $53,923,471, proposed to be issued in settlement of the claims of creditors, is too low and should be increased so as to permit a wider distribution thereof among security holders of the Debtor.

(3) Other provisions of the proposed First Mortgage including those relating to the reserve and retirement funds, are novel and questionable and the Debtor, while reserving the right to object to any or all of such provisions, specifically objects to the proposed mandatory fund of $2,500,000 and the discretionary fund of $2,500,000 as constituting wholly unwarranted and unnecessary diversions of earnings which might otherwise accrue to the capital stocks of the reorganized Company.

F. The Debtor objects to paragraph F of said order on various grounds, including (but without limitation) the following:

(1) The 4½% interest rate on the proposed General Mortgage Income Bonds, Series A, is too high and should be reduced to not more than 4%, so as to permit an increased principal amount of such General Mortgage Income Bonds to be issued without increasing the contingent interest charge thereon.

(2) The provision that the interest on Income Bonds, Series A, be cumulative to a maximum amount of 13½% should be eliminated.

(3) The amount of General Mortgage Income Series A Bonds, namely, $57,256,669, proposed to be issued in connection with the reorganization is too low and should be increased so as to permit a wider distribution thereof among security holders of the Debtor.

(4) The 4½% interest rate on the proposed General Mortgage Series B Convertible Income Bonds is too high and should be reduced to not more than 4% so as to permit an increased principal amount of such bonds without increasing the contingent interest charge thereon.

(5) The provision that the interest on Income Bonds, Series B, be cumulative to a maximum amount of 13½% should be eliminated.

(6) The amount of General Mortgage Series B Convertible Bonds, namely, $51,422,111, proposed to be issued in connection with the reorganization is too low and should be increased so as to permit a wider distribution thereof among security holders of the Debtor.

(7) Other provisions of the proposed General Mortgage including those relating to the reserve and retirement funds are novel and questionable and the Debtor, while reserving the right to object to any or all of such provisions, specifically objects to the proposed mandatory fund of $2,500,000 and the discretionary fund of $2,500,000 as constituting wholly unwarranted and unnecessary diversions of earnings which might otherwise accrue to the capital stocks of the reorganized Company.

G. The Debtor objects to paragraph G of said order on the ground that provisions for dealing with the bonds therein mentioned may prove not workable and retard reorganization, the Debtor hereby reserving the right to propose more practicable alternative solutions of the problems arising in connection therewith.

H. The Debtor objects to paragraph H of said order on the ground that the first income period should be July 1, 1935 to January 1, 1936, and that each calendar year thereafter should be and constitute a separate income period, and further objects specifically to the funds referred to in Clauses (A) and (B) thereof and to each and every proposed application of income for interest or other payments at rates or upon terms to which objection has heretofore been made.

1. The Debtor objects to paragraph 1 of said order on various grounds, including (but without limitation) the following:

(1) A larger number than 1,113,478 shares of Pre-

ferred Stock, Series A, for distribution in reorganization is justified by the capital invested in and the earning power of the Debtor's properties.

(2) A dividend rate of 5% is too high for Preferred Stock issued in reorganization.

(3) The proposed Preferred Stock should be conformed to the listing requirements of the New York Stock Exchange and other Exchanges subject to the Securities and Exchange Commission.

J. The Debtor objects to paragraph J of said order on the ground that the initial distribution in reorganization of Common Stock is inadequate.

K. The Debtor objects to paragraph K of said order on the ground that the new securities therein referred to and the annual interest period therein referred to are subject to the objections heretofore made, but otherwise the Debtor interposes no objection to the mechanics provided for in said paragraph K.

L. The Debtor objects to each and every provision of paragraph L of said order inconsistent with the foregoing objections or any thereof or with the Debtor's detailed claim for more equitable treatment as hereinafter set forth, and, without limiting its general objections to said paragraph L and each and every part thereof the Debtor specifically objects to the paragraph or subsection thereof reading:

"The equity of the holders of the Debtor's Preferred Stock and Common Stock having been found to be of no value, such stockholders shall not be entitled to participate in the Plan."

The Debtor specifically objects to said subsection or paragraph on the grounds, among others:

(a) That there has been no lawful finding that the equity represented by the Debtor's Preferred and Common Stock has no value;

(b) That there has been no valuation of the Debtor's property for the purpose of a lawful determination of its solvency or the value of the equity represented by its Preferred and Common Stock.

(c) That there is value in such equity on the basis of the capital invested in the Debtor's property under the protection of the Fifth Amendment to the Constitution of the United States;

(d) That there is value in such equity on the basis

of the valuation of the Debtor's properties by the Interstate Commerce Commission under Section 19a of the Interstate Commerce Act;

(e) That there is greater value in such equity on the basis of a correct and lawful valuation of the Debtor's property under Section 19a of the Interstate Commerce Act;

(f) That there is value in such equity on the basis of the current earnings of the Debtor's property or on the basis of the earnings thereof in any fair test period;

(g) That there is greater value in such equity on the basis of the current earnings of the Debtor's property or on the basis of the earnings thereof in any fair test period, if proper allowances are made for undue high operating expenses under present but not necessarily permanent conditions and for a fair capitalization of the earning power of the Debtor attributable to the proposed annual capital funds, sinking funds and other funds representing reinvested capital.

M. The Debtor objects to paragraph M of said order on the ground that it purports to require the reorganized Company to assume executory contracts of the Debtor or the bankruptcy Trustees which are not required by Section 77 or the law of the land to be assumed by the reorganized Company.

N. The Debtor objects to paragraph N of said order and to all of the provisions thereof and respectfully submits that the entire Plan must be developed by the parties in interest, the Interstate Commerce Commission and the Court; that no Reorganization Committee may be permitted to add to or subtract from a Plan which must be so far complete that all basic provisions may be communicated to the parties entitled to vote thereon in order to enable them intelligently to cast their ballots; that all matters which are not basic or integral parts of the Plan should be left to the authority and discretion of the Debtor, and that a proper Plan of Reorganization may be made effective at a minimum cost and with a minimum of delay by the action of the Debtor alone taken under and in pursuance of subsection (f) of Section 77 of the Bankruptcy Act, and the Debtor specifically objects to the creation of a voting trust, the object of which is to vest control of the reorganized Company in a minority of its stockholders and also specifically objects

to the proposed inclusion in a Plan of Reorganization of by-law provisions which may impair the right of the stockholders of the reorganized Company to control its affairs in accordance with the law.

O. The Debtor objects to paragraph O of said order on the ground heretofore stated with respect to paragraph B, and further objects to January 1, 1939, as the effective date of the Plan.

P. The Debtor objects to paragraph P of said order and to each and every provision thereof, and respectfully submits that a sale such as is therein provided for is unauthorized by Section 77 of the Bankruptcy Act.

Q. The Debtor objects to paragraph Q of said order as unauthorized by Section 77 of the Bankruptcy Act.

R. The Debtor objects to paragraph R of said order unless it is modified so as to make unnecessary the submission to parties entitled to vote upon the Plan matters not basic such as the full texts of the new bonds, mortgages, stock certificates and all instruments necessary and appropriate to the carrying out of the Plan.

S. The Debtor does not object to but on the contrary expressly invokes paragraph S of said order and hereby objects specifically to each and every paragraph and provisions of said order inconsistent therewith.

II.

Specific Objections to the Commission's Certified Plan.

T. Without limiting any of the foregoing general objections, the Debtor objects specifically to the following features of the certified Plan or the capital structure of the reorganized Company as proposed thereunder:

1. That the new First Mortgage be a lien on all after-acquired property.

2. That the new First Mortgage Bonds, Series A, initially issued, be in the amount of $53,923,171.

3. That the new First Mortgage Bonds bear interest at 4%.

4. That additional new First Mortgage Bonds be issued only against 75% of the capital cost of additions and betterments to roadway and acquisitions of fixed property, the purchase of equipment and for the refunding of debt.

5. That the General Mortgage Income Bonds, Series A, initially issued, be in the amount of $57,256,669.

6. That the General Mortgage Income Series B Bonds, initially issued, be in the amount of $51,422,111.

7. That the setting up or creation of mandatory funds of $2,500,000 and discretionary funds of $2,500,000 in connection with the issuance of new First Mortgage Bonds and General Mortgage Income Bonds constitutes a wholly unwarranted and unnecessary diversion of earnings which might otherwise accrue to the capital stocks of the reorganized Company and could properly provide a basis for the additional capitalization of the reorganized Company in which the Debtor might have an interest. That these proposed funds, mandatory and discretionary, deprive the Debtor, or capital stock which might accrue to the Deptor, of rights in earnings without in any way compensating the Debtor therefor.

8. That the Income Bonds, Series A and Series B, should bear interest at the rate of 4½% and be cumulative up to 13½%.

9. That a Sinking Fund be provided for the First Mortgage and Income Mortgage.

10. That the reorganized Company assume executory contracts not disaffirmed during trusteeship.

11. That the right of the reorganized Company to pledge bonds only up to a percentage of undefined obligations is impracticable by reason of lack of definiteness, and the same infirmity underlies the provisions limiting the use of First Mortgage Bonds and Income Mortgage Bonds for the purchase of or in payment for additional property.

12. That the provisions for a voting trust are undemocratic and are designed to lodge control of the reorganized Company in a minority of its stockholders.

13. That there should be a Reorganization Committee thereby adding to and unduly increasing the expense of reorganization which should be carried out by the Debtor in accordance with the provisions of subsection (f) of Section 77 of the Bankruptcy Act.

III.

Detailed Claims of the Debtor for Fair and Equitable Treatment.

U. The Basic Date for Reorganization Should Be the Effective Date of the Plan.

The Debtor's Plan of Reorganization was filed herein on June 29, 1935, contemporaneously with the filing of its petition under Section 77 of the Bankruptcy Act and the effective date of the Debtor's Plan is July 1, 1935. The order of the Court directing the filing of the petition fixed midnight, June 30, 1935, for opening new books of account for the operations under Section 77. Subsection (1) of Section 77 of the Bankruptcy Act provides:

> "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court, the duties of the debtor and the rights and liabilities of creditors, and of all persons with respect to the debtor and its property, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the debtor's petition was filed."

By the terms of the above subsection and the order of the Court approving the Debtor's petition it was the apparent purpose to fix the rights and liabilities of creditors and all persons with respect to the Debtor and its property as of July 1, 1935, instead of June 29, 1935, which in the absence of such order and appropriate adjustments for two days of prior operation must be the basic reorganization date and the effective date of any lawful Plan under Section 77.

On February 1, 1938, a Group of Institutional Investors representing holders of the Debtor's underlying bonds filed a Plan of Reorganization differing from the Plan filed by the Debtor, the Plan so filed by the Group of Institutional Investors to be made effective as of January 1, 1938—two and one-half years later than the basic date of reorganization and two and one-half years later than the date proposed in the Plan filed by the Debtor. The Debtor objected to the Plan filed by the Group of Institutional Investors on various grounds but did not object to moving forward the effective date of the Plan—on the contrary it asked that the effective date be January 1, 1939, instead of Janu-

ary 1, 1938, and that the accumulation of interest "be restated as of that date." This in effect changes the basic date of reorganization and annuls the provision of subsection (1) quoted above. Mature consideration which has been given to the Bankruptcy Act and the body of law developed thereunder both before and after the adoption of Section 77 has convinced the Debtor's counsel that there can be no valid Plan under Section 77 having an effective date differing from the basic date fixed by Section 77, unless there is a retroactive adjustment so that the rights of the parties between the basic date of reorganization and the effective date of the Plan will be the same as if the latter had been the basic date prescribed by subsection (1). Accordingly, as one of its claims for fair and equitable treatment, the Debtor asks that the basic date fixed by said subsection (1) be made the effective date of the Plan.

V. The Capitalization of the Reorganized Company Should Be Commensurate With the Existing Investment In the Property.

The Interstate Commerce Commission conceives itself to be under a mandate to approve no Plan of Reorganization that does not provide for a drastic reduction of capitalization. What the source of this mandate is thought to be has never been definitely stated but there have been intimations that it is an incident or derivative of the provision of Section 77 requiring the Plan to be compatible with the public interest. The Debtor respectfully submits that Section 77 having been approved by Congress as a measure for the "Relief of Debtors" (that is the title of the Act and the declaration of purpose stated in Section 73) not only contains no mandate to the Interstate Commerce Commission of that character but on the contrary contemplates the preservation and not the wiping out of invested capital.

Inasmuch as all capital permanently invested in rail carriers since March 1, 1920, has been invested under a certificate of the Interstate Commerce Commission that the issue of the new capital security is in the public interest, the Interstate Commerce Commission is in the curious and not altogether enviable position of attempting to annul with its left hand the very capital securities which it has put into circulation with its right hand. In the early days of the depression private investors were urged to lend capital to the rail carriers to avert receivership or bankruptcy and many hundreds of millions of dollars were loaned to the

carriers under these circumstances and in every case the Interstate Commerce Commission issued its certificate under Section 20a of the Interstate Commerce Act that the issue of the securities or obligations representing this new capital was compatible with the public interest but it now proposes (unless the lender be a Government Agency in which event its vision seems strengthened by the use of a different type of lens) to annul and wipe out these new capital securities on the theory that to keep them alive is incompatible with the public interest.

That Section 77 admits of no such construction is clear. Nowhere in the statute is there any grant of authority or jurisdiction to limit capitalization or any suggestion that the Interstate Commerce Commission should undertake to reduce, limit or otherwise deal with capitalization except that part thereof represented by fixed interest bearing indebtedness. The real intent is to keep alive and conserve true values by averting a foreclosure or other permanent readjustment of capital on the basis of depression estimates. The Interstate Commerce Commission is expressly authorized by Section 77 to limit fixed charges, but this power must be exercised subject to and in conformity with a prescribed statutory formula, the validity of which authorization is subject to challenge by bondholders. It would, therefore, be contrary to familiar rules of statutory construction to assume that a greater authority—the authority to limit the character of all forms of capital securities—is given (a) not expressly but only by implication and (b) to be exercised not according to formula or statutory guide but in the unchartered discretion of the Interstate Commerce Commission. Accordingly, as one of its specific claims for fair and equitable treatment, the Debtor asks that the reorganized Company be authorized to issue capital securities in the amount proposed on its Plan of Reorganization filed herein as of July 1, 1935, plus the capital invested in the Debtor's property after that date.

W. The Principles of the Debtor's Plan Which is a Practicable One Should Be Substituted for the Impracticable Plan Certified by the Interstate Commerce Commission.

The true function of the Interstate Commerce Commission is to reconcile differences which may arise between security holders so as to develop a Plan that will receive the requisite support of security holders and not to rewrite

the Debtor's capital structure so as to give expression to its own ideals.

In *Continental Illinois Bank and Trust Company* v. *Chicago, Rock Island & Pacific Railway Company*, 294 U. S. 648, the United States Supreme Court recognized this to be the theory of Section 77 when it said:

> "As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the Act of 1867, as amended by the Act of 1874" (p. 672).

To this end subsection (d) of Section 77 requires that a Plan of Reorganization shall be set down for hearing unless the Interstate Commerce Commission shall consider it to be "prima facie impracticable." Obviously, the Interstate Commerce Commission, if it is to develop a Plan that will bring the property of the Debtor out of the Courts and restore it to private operation ought not itself report a Plan which, should it be proposed by the Debtor or by a group of creditors, it would be the duty of the Commission to dismiss because impracticable. The Plan proposed by the Debtor was the result of protracted negotiations between the Debtor and substantial interests whose capital is invested in the property and was approved by the Group of Institutional Investors. Later this Group filed its own Plan and it is submitted that these two Plans should be adhered to in principle so far as possible in the development of a final Plan. The Commission having, however, departed fundamentally from what is desired by the parties in interest it is most appropriate that the corrective power of the Court be exercised in favor of a Plan that may reasonably be expected to prove a practicable one, acceptable to the requisite percentages of creditors and stockholders even though it falls short of the ideal for which the Interstate Commerce Commission is commendably striving.

X. No Par Value Stock Without an Artificial Stated Value Should Be Restored to In Order to Facilitate Reorganization and Avoid Representations Which May Be Misleading to the Public.

The Debtor's original Plan provided for new Common Stock having a par value of $25 per share in substitution for Common Stock without par value issued under the 1928 reorganization. This backward step was taken as we under-

stand in deference to the aversion to stock without par value which the Commission has developed since the passing of Section 77 and which is disclosed by their invariable practice of assigning to stock without par value a value of $100. This aversion to true no par value stock is an incident to the Commission's assertion of the power to limit capitalization which the Commission conceives (we think erroneously for reasons already stated) is given to it by Section 77. The Group of Institutional Investors, however, have recommended true no par value stock but the Commission has rejected the recommendation and adheres to its practice of attributing to the no par value stock an arbitrary and misleading value of $100 per share. Values, however, change from day to day, from week to week and from year to year, and it is impossible to maintain any rational relationship between the property account and the capital stock and why therefore should the Interstate Commerce Commission be permitted to fix and insist that the unwilling security holders agree to a relation which almost immediately will begin to yield to the force of changing conditions. Moreover, by fixing an arbitrary value of $100 to such stock the Commission reduces the number of shares available for distribution to junior interests and arbitrarily excludes them from receiving recognition which the Debtor's creditors and stockholders believe they should receive and are willing to accord them.

Y. The Proceeding Should Be Referred Back to the Interstate Commerce Commission with a Recommendation that Specific Amendments Be Made In Order to Cure the Defects In the Certified Plan.

Subsection (e) of Section 77 provides that the proceeding be referred back to the Interstate Commerce Commission if not approved by the Court. There is every reason to assume that the Interstate Commerce Commission will act promptly to correct defects in its certified Plan reflected by the opinion required to be filed by the Court when a certified Plan is not approved.

At a hearing before the Special Subcommittee on Bankruptcy and Reorganization of the Committee on the Judiciary of the House of Representatives, on June 21, 1939, Honorable Joseph B. Eastman, now Chairman of the Interstate Commerce Commission, approved this procedure. In

discussing a legislative proposal for the amendment of Section 77 of the Bankruptcy Act, Mr. Eastman said:

> "However, in most of the important reorganization cases now pending before the Commission the record has already been made, and the time thus consumed cannot now be saved. Any conclusions that the Commission may reach in these cases as to respective liens and priorities will be helpful to the judge as the equivalent of a report by a master, and the Commission will readily respond to adjustments of the plan to any different conclusions he may reach as to such matters."

Z. Specific Amendments Necessary to Cure the Defects In the Certified Plan and to Accord to the Debtor Fair and Equitable Treatment.

The Debtor recognizes that many of the detailed provisions and mechanical features of the certified Plan are in accordance with its own recommendations or follow views expressed by the Debtor's counsel and that in presenting its claim for equitable treatment it will be convenient, consistent with positions so taken, and a forward step toward an ultimate reorganization to adhere as closely as practicable to the physical structure of the Commission's Plan but with the following basic modifications:

(1) The effective date to be July 1, 1935, instead of January 1, 1939, subject to retroactive adjustment for two days prior operations under Section 77, should June 29, 1935 be held to be the basic date instead of July 1, 1935, as apparently contemplated by the order of Court approving the Debtor's petition.

(2) The capitalization of the reorganized Company to be not less than that prescribed in the Debtor's original Plan filed as of July 1, 1935, plus the capital invested in the Debtor's property after that date.

(3) Interest and dividend rates to be scaled down to post-deflation levels—those tentatively suggested herein being 3½% for the new First Mortgage Bonds, 4% for the Income Mortgage Bonds, Series A and Series B, and 4½% for the Preferred Stock, but without prejudice to the right to ask a further downward revision for all or any thereof.

(4) Increases in the principal amount of Frst Mortgage Bonds, Income Bonds, Series A and Series B, and Preferred Stock, at least proportionately to the de-

creases in the interest and dividend rates above proposed.

(5) Earnings of the property subsequent to midnight, June 30, 1935, to be distributed to the holders of the securities of the reorganized Company as if said new securities had been issued in fact as well as in law on July 1, 1935, thus giving full recognition of the right of the holders of new securities implicit in the securities exchanged therefor to receive actual (but not unearned) income subsequent to such basic date as fixed by Subsection (f) of said Section 77. Such distribution of income may be made in cash or in securities of the same character as those upon which it accrued, or partly in each.

(6) Stockholders to be given full recognition in the order of their priorities of their equity based upon their constitutional right to earn a fair return on a capitalization not less than that prescribed in the Debtor's original Plan filed as of July 1, 1935, plus the additional capital invested in the property since that date, the Debtor hereby renewing each and every objection heretofore made to the attempt of the Interstate Commerce Commission to wipe out, extinguish and destroy the property rights of the Debtor's stockholders in the Debtor's property represented by their shares of stock.

The Debtor is advised and respectfully represents that it is impracticable at this juncture to formulate a precise form or outline the mechanical arrangements for the protection of and recognition to be accorded the equity in the Debtor's property represented by its Preferred Stock and Common Stock. The present Preferred and Common stockholders may be given unconditionally a percentage of their respective shares in the Common Stock of the reorganized Company or may be given warrants to purchase shares of Common Stock of the reorganized Company on equitable terms, or their equity and property rights may be recognized and the priorities preserved by requiring the Common stockholders to contribute new money, receiving therefor an allotment of Income Bonds equal at par to the new money contributed and the percentage of their present Common Stock in new Common Stock, the Preferred Stockholders to receive a percentage of new Common Stock at least as great accorded the Common stockholders but without being asked to contribute new capital, the actual amount

of such capital if provided by Common stockholders to be related—

(a) to the amount of cash required by the reorganized Company for working capital;

(b) to the amount of cash distributable in respect of income subsequent to June 30, 1935; and

(c) reorganization expenses.

In the event of the failure of the Common stockholders of the Company to provide or underwrite the provision of such new capital, the Preferred Stock may succeed to and take all of the benefits of the Plan not availed of by the Common stockholders.

One or more methods of dealing with the equity represented by the Debtor's Common and Preferred Stock may be developed in detail and a complete substitute Plan proposed if adequate opportunity denied by the Interstate Commerce Commission (we think wrongfully) be afforded the Debtor to prepare and submit it and support it by evidence.

In submitting the foregoing Objections the Debtor does not waive but hereby reasserts the right to ask that reorganization be deferred for a reasonable time until normal economic conditions are restored or at least until the possibility is exhausted of a complete restoration of earning power through the consolidation processes referred to in the separate report or opinion of Commissioner Miller prefixed to the Commission's Supplemental Order dated June 4, 1940.

The right to be heard orally and upon briefs and to submit evidence in support of the foregoing Objections and claims for equitable treatment is hereby requested.

Dated, July 30, 1940.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

By Pierce & Greer,
Its Attorneys,
40 Wall Street,
New York, New York.

Frank C. Nicodemus, Jr.,
A. Perry Osborn,
Of Counsel.

674 And on, to wit, the 1st day of August, A. D. 1940, came The First National Bank of Chicago by its attorneys and filed in the Clerk's office of said Court its certain objections, in words and figures following, to wit: Filed Aug. 1, 1940.

675 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS AND SUGGESTIONS OF THE FIRST NATIONAL BANK OF CHICAGO, AS TRUSTEE, UNDER AN INDENTURE DATED DECEMBER 1, 1910 SECURING CHICAGO TEBRE HAUTE AND SOUTHEASTERN RAILWAY COMPANY'S INCOME MORTGAGE FIFTY-YEAR GOLD BONDS, WITH RESPECT TO THE MODIFIED PLAN OF REORGANIZATION OF THE DEBTOR.

The First National Bank of Chicago (hereinafter called the "Trustee") represents that it is corporate Trustee under an Indenture dated December 1, 1910 from Chicago, Terre Haute and Southeastern Railway Company (hereinafter called "Terre Haute") to the First Trust and Savings Bank and Louis Boisot, Trustees, securing an issue of Terre Haute's Income Mortgage Fifty-Year Gold Bonds in the principal amount of $6,500,000, of which bonds of the par value of $6,336,000 are now issued and outstanding in the hands of the public and that Terre Haute is the Lessor in a certain Indenture of Lease between it, as Lessor, and Chicago, Milwaukee and St. Paul Railway Company, Lessee, dated July 1, 1921, which the Trustee believes to be subject to the aforesaid Indenture of Trust and presents and files the following objections and suggestions with respect to the modified plan of reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, in so far as it purports to deal with the said leasehold.

1. The existing lease is for the mutual benefit of the Debtor and the Terre Haute, and rejection thereof is not in the interest of either, in that, among other things:

(a) The Debtor has received substantial profits from the operation under said lease ever since the inception of the lease; and

(b) The security holders of the Terre Haute have been satisfied up to this time with the rental provisions

of said lease and rejection of the lease will impose upon the Terre Haute the obligation of resuming operation of its road for which it is at this time entirely unprepared.

2. Trustee considers that in so far as it is its duty to make any recommendation with respect thereto, it should not recommend a modification of said leasehold to provide a lesser yearly rental than is now provided in the existing lease.

3. The modified plan and report accompanying it do not disclose the effects upon the new company arising from rejection of the lease under the modified plan of reorganization, nor provide how the obligations imposed upon Trustees of the Debtor, arising upon rejection, are to be treated. Trustee, believing that the court, in considering the modified plan of reorganization, should be advised of its posi-
676 tion with respect to rejection of the leasehold, to that end suggests for the court's consideration the following:

(a) It is the position of Trustee that upon rejection of the lease the Trustees of the Debtor must pay to the Terre Haute all profits which have accrued from the operation of the leased property since the beginning of these proceedings, and that a proper plan should make provision therefor;

(b) It is the position of the Trustee that upon rejection of the lease the Trustees of the Debtor must make proper adjustment for all equipment vacancies occurring since the beginning of these proceedings, and that a proper plan should make provision therefor.

4. Trustee submits for the consideration of the court the following suggestions with respect to the effect of rejection of the lease upon the new company under the proposed modified plan of reorganization:

(a) The modified plan proposes that, lacking acceptance by substantially all of the Terre Haute bondholders of the proposed rental changes, etc., the lease shall be rejected "as of the date of such determination by the court." Trustee takes the position that in this proceeding the court has no such power, its power being confined to rejecting the lease which, under the law, is effective as of the date the proceedings were initiated;

(b) The amount of profit made upon the operation of the Terre Haute properties under the existing leasehold has in the past been more than sufficient to pay not less than two-fifths (2/5ths) of the fixed charges upon the proposed first mortgage bonds of the new company;

(c) The modified plan of reorganization for the purpose of eliminating $419,432 of fixed charges for interest upon the Terre Haute securities proposes to sacrifice more than a million dollars of net income arising from operation of the leased property so that after the rejection of the lease the modified plan does not assure sufficient net income to justify the fixed charges proposed in the modified plan;

(d) The modified plan is based upon the judgment of the Interstate Commerce Commission that the fixed charges should not exceed approximately $4,270,000, but in making its determination of the amount of fixed charges which the new company might safely bear, the Commission included the profit from the Terre Haute lease. Assuming the basis upon which the Commission proceeded is sound, but eliminating the profit accruing from the Terre Haute lease, then the amount of fixed charges should be substantially reduced so that the modified plan, if true to the basis upon which it is predicated, should provide that in the event of rejection of the Terre Haute lease, the fixed charges upon all the securities of the new company should be reduced by the amount of income lost on account of rejection. Trustee believes that upon the basis assumed by the Interstate Commerce Commission the modified plan upon rejection of the Terre Haute lease becomes unworkable.

5. Trustee respectfully suggests that the proposal in the modified plan of reorganization that, unless substantially all of the security holders of Terre Haute accede to the changes proposed by the Interstate Commerce Commission, the lease will be rejected is unequitable in that:

(a) Neither the plan nor the report adequately sets forth the treatment to be accorded the Terre Haute by the Trustees of the Debtor upon rejection of the lease so that Terre Haute security holders do not have sufficient information upon which to make a choice;

(b) The modified plan is silent upon how the plan is to be made effective even if substantially all the security holders of the Terre Haute accept the proposed changes;

(c) Since the report of the Interstate Commerce Commission shows that the existing leasehold has been profitable to the Debtor, and since it is known that the Terre Haute is not now prepared to resume operations of its railroad, the proposal takes on the appearance of an effort to coerce security holders of the Terre Haute into accepting a less favorably yearly rental in order to increase the net income of the new Company.

6. Trustee suggests that it is in the interests of 677 Terre Haute security holders and the security holders of the Milwaukee that the yearly rental in the existing leasehold be not changed.

Dated, Chicago, Illinois, August 1, 1940.

Respectfully submitted,

The First National Bank of Chicago, *as Trustee under an Indenture dated December 1, 1910 between Chicago, Terre Haute and Southeastern Railway Company and First Trust and Savings Bank and Louis Boisot, Trustees,*

By R. C. Osgood, *Vice President.*

Cassels, Potter & Bentley, *Attorneys.*

683 And on, to wit, the 1st day of August, A. D. 1940, came E. Stanley Glines, et al., by their attorneys and filed in the Clerk's office of said Court their certain objections and claim for equitable relief, in words and figures following, to wit:

684 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Aug. 1, 1940.

(Caption—60463)

OBJECTIONS AND CLAIM FOR EQUITABLE TREATMENT OF E. STANLEY GLINES, MORTON H. FRY, W. RODMAN PEABODY, R. HARLAND SHAW, AND C. OLIVER WELLINGTON, AS A PROTECTIVE COMMITTEE FOR HOLDERS OF FIFTY YEAR FIVE PER CENT. MORTGAGE GOLD BONDS, SERIES A, DUE FEBRUARY 1, 1975, OF THE DEBTOR.

Come now your petitioners, E. Stanley Glines, Morton H. Fry, W. Rodman Peabody, R. Harland Shaw and C. Oliver Wellington, as a Protective Committee (hereinafter referred to as the "Committee") for Holders of the Debtor's Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975 (hereinafter referred to as the "5s of '75"), and object to the Modified Plan of Reorganization of the Debtor (hereinafter referred to as the "Modified Plan") set forth in the Supplemental Report and Order, certified to the Court by the Interstate Commerce Commission on July 14, 1940, and claim equitable treatment in the particulars and on the grounds hereinafter set forth:

First. The Modified Plan is based on business conditions for the past ten years, and business conditions for the past ten years, particularly with respect to railroads, involve a period of exceptional business depression and the true earning capacity of the Debtor cannot be determined on the basis thereof. Moreover, the test year on which the Modified Plan is based is 1936 which was an abnormal year extremely unfavorable to the lines west and hence unfair to the 5s of '75.

Second. Even if business conditions for the past ten years (particularly 1936) are to be regarded as affording a true test of the earning capacity of the Debtor, there is not sufficient data in the record to support the Modified Plan.

Third. Even assuming that the true earning capacity of the Debtor can be determined from conditions for the past ten years (particularly 1936) and that there is adequate data in the record, the so-called "Formula" which

was used for the purpose of determining relative priorities is arbitrary and unfair to the 5s of '75.

Fourth. The Modified Plan gives no recognition to the fact that in computing earnings available for interest for any test period, the 5s of '75 should be credited with the excess earnings of the Terre Haute and the Milwaukee & Northern and that even for the year 1936 earnings properly applicable to the 5s of '75 amounted to approximately $2,000.000.

Fifth. The Modified Plan takes away from holders of the 5s of '75 their virtual first lien on the lines west, comprising 2860.39 miles of rail (almost a railroad system in itself), the pieces of lines east and the stock and lease of the Terre Haute and certain other property of the Debtor and gives a prior lien on such property, in the form of new securities, to the Generals. Despite their virtual first
685 lien on the lines west, the Modified Plan does not give the 5s of '75 any of the new first mortgage bonds or of the new Series A bonds and thus deprives holders of the 5s of '75 of their property without due process of law and just compensation, in violation of the Constitution of the United States.

Sixth. The Modified Plan is unfair and inequitable in that it fails to recognize the value of the security of the 5s of '75 on the same basis of priority that is adopted in the recognition of the value of other property included in the new first mortgage lien, and fails to give due recognition to the priority of holders of the 5s of '75. In particular, the Modified Plan does not give effect, in its allocation of securities, to the value of the physical property covered by the lien of the 5s of '75, to the value of the lines west as a single system divorced from the rest of the Debtor's property, to the value of the lines west in the event of the consolidation of the Debtor with other railroads, to the value of the lines west as integral part of the Debtor's system, to the value of the lines west in the event of the future development, industrial and otherwise, of the western part of the United States, to the value of the lines west as a direct outlet to the coast which is an inducement to shippers to locate themselves on the eastern lines, thus holding large quantities of traffic which is purely local to eastern lines or to the lien of the 5s of '75 on the pieces of lines east.

Seventh. The Modified Plan should be made effective as

of July 1, 1935, as the nearest convenient accounting date to the date of the filing of the petition herein and the fixing of rights thereunder, instead of January 1, 1939, and if any later date is adopted the rights of the holders of new securities in income subsequent to July 1, 1935, should be adjusted retroactively to said date and their rights of participation in such income limited to what they would have received if the effective date had been July 1, 1935, and equitable provision made for the payment thereof.

Eighth. The Voting Trust provided for in the Modified Plan is unfair to the 5s of '75, is contrary to equity and deprives those who receive stock in the reorganized company under the Plan, of those voting rights which contribute substantially to the value of the stock received and without which the stock so received becomes wholly inadequate for purposes of the Plan.

Ninth. The optional payment to the Additions and Betterments Fund should come after dividends on the new Preferred Stock.

Tenth. If Preferred Stock is given to the 5s of '75, it should be convertible into Common Stock at any time at the option of the holder.

Dated, July 31, 1940.

Respectfully submitted,
E. Stanley Glines,
Morton H. Fry,
W. Rodman Peabody,
R. Harland Shaw,
C. Oliver Wellington,
Protective Committee for Holders of Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A. due February 1, 1975, of the Debtor.
By E. Stanley Glines.

Hodges, Reavis, Pantaleoni & Downey,
20 Pine Street,
New York, N. Y.
Malcolm Mecartney,
1 North La Salle Street,
Chicago, Illinois.
Attorneys for Objectors.

Filed Aug. 1, 1940.

686 And on, to wit, the 1st day of August, A. D. 1940 came the City Bank Farmers Trust Company by its attorneys and filed in the Clerk's office of said Court its certain Statement of Position as Trustee re plan of Reorganization in words and figures following, to wit:

687 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

STATEMENT OF POSITION OF CITY BANK FARMERS TRUST COMPANY, AS TRUSTEE, WITH RESPECT TO THE PLAN OF REORGANIZATION CERTIFIED TO THE COURT BY THE INTERSTATE COMMERCE COMMISSION.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

City Bank Farmers Trust Company, as successor trustee under the First Mortgage, dated June 10, 1880, of Milwaukee and Northern Railroad Company (hereinafter called the "Northern") and under the Consolidated Mortgage, dated February 11, 1884, of the Northern, respectfully submits the following statement of its position, pursuant to the provisions of the order of this Court herein, dated June 21, 1940:

1. City Bank Farmers Trust Company, as trustee under the two mortgages above described (said Trust Company as such trustee being hereinafter called the "Northern Trustee"), filed in the proceeding before the Interstate Commerce Commission for the reorganization of Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter called the "Debtor"), Finance Docket No. 10882, its original brief dated May 31, 1938, in which it pointed out that the position of both issues of Northern bonds was so strong that such bonds should be left undisturbed except for the extension of their maturity for ten years, as recommended in the Debtor's original plan. This position was based upon the record made at the previous hearings and was fully discussed in that brief which, among other things, analyzed the testimony introduced in that proceeding by the Northern Trustee through its expert witness,

Lawrence Richardson, an engineer with twenty-seven years active railway experience.

2. Subsequently, the Northern Trustee filed in said proceeding before the Commission its exceptions to the Report proposed by Examiner M. S. Jameson and its memorandum dated June 29, 1938 in support of such exceptions. The Northern Trustee called attention to the facts with respect to the value of the property securing the two Northern mortgages, the earnings of such property and the strategic position of the Northern lines, upon which facts it relied in support of its proposal for the extension, upon the same security, of both issues of Northern bonds to 1949 at the rate of interest previously borne by these bonds, 4½%.

3. Subsequently, the Interstate Commerce Commission issued its Report and Order dated February 12, 1940, setting forth a plan of reorganization for the Debtor. In such Report and Plan the Commission did not adopt the proposals of the Northern Trustee but the Commission did improve relatively the provision made for both issues of
688 Northern bonds over the treatment proposed for those issues in the Examiner's Report.

4. Because the position of the Northern Trustee had been fully presented to the Commission by brief and in oral argument, the Northern Trustee concluded that no useful purpose would be served by filing with the Commission a petition for modification of its Report and Order, renewing the points previously raised, and no such petition was filed. Petitions for modification were filed by other parties, however, and thereafter the Northern Trustee filed its answer thereto and statement of position dated April 20, 1940, in which it restated its view that both issues of Northern bonds are entitled on the facts to better treatment than that provided in the Commission's Report and Order.

5. After analyzing the Supplemental Report and Order of the Commission and the Plan of Reorganization (hereinafter called the "Plan") as certified to this Court, the Northern Trustee remains of the opinion that the treatment proposed for the two issues of Northern bonds is not completely fair and equitable to the holders of such bonds. After careful consideration the Northern Trustee has reached the conclusion, however, that the expeditious consummation of the proposed reorganization of the Debtor, pursuant to the provisions of the Plan would be to the best

interests of the holders of the bonds of both Northern issues, and that the advantages accruing to the holders of said bonds from such a course outweigh the possibility of securing better treatment for the bonds of these two issues, or of either of such issues, after an extended delay and costly litigation. Accordingly, the Northern Trustee has concluded not to file with the Court at this time any objections to the Plan and, if the Plan is approved by this Court, the Northern Trustee is prepared to recommend that the holders of the bonds of both Northern issues accept the Plan, provided that it appears that reorganization upon that basis can be consummated reasonably promptly.

6. The position here taken by the Northern Trustee is based on its view that as between the alternative of a prompt consummation of the Plan, as a whole, and the alternative of further and perhaps protracted and costly litigation, the first alternative is in the best interest of the holders of both issues of Northern bonds. If any other or modified plan is considered by this Court or by the Commission or if delay or further litigation is unavoidable, the Northern Trustee reserves the right to assert that the provision made for the bonds of both Northern issues, or either of them, is not fair and equitable, fails to afford due recognition to the rights of the holders of such two issues, respectively, or either of them, discriminates unfairly against such holders and in favor of other classes of creditors of the Debtor, and fails to conform with the requirements of the law of the land regarding participation of the various classes of creditors and stockholders of the Debtor; and to do so notwithstanding the fact that the provision made in such other or modified plan for such bonds may be substantially similar to the provision made in the Plan.

7. Objections to the Plan and claims for equitable treatment which may be filed herein by other parties may place in issue certain features of the Plan and other matters affecting the rights and interests of the holders of bonds of one or both of the Northern issues, with regard to which matters it may be necessary or desirable for the Northern Trustee to have opportunity to be heard.

Wherefore, the Northern Trustee prays that it may be permitted to be heard at the hearing on such objections to the Plan and such claims for equitable treatment as may be filed by other parties in interest and upon any related

matters which may be developed at such hearing as the
689 Northern Trustee may deem necessary or desirable in order properly to protect the interests of the holders of the Northern bonds of one or both issues; that it may be permitted to file briefs in connection therewith; that, if any other or modified plan should be considered by this Court or by the Commission or if delay or further litigation in connection with the reorganization of the Debtor is unavoidable the Northern Trustee may be permitted to assert that the provision made in the Plan or in any other or modified plan for the bonds of both Northern issues, or either of them, is not fair and equitable, fails to afford due recognition for the rights of the holders of such two issues, respectively, or either of them, discriminates unfairly against such holders and in favor of other classes of creditors of the Debtor, and fails to conform with the requirements of the law of the land regarding participation of the various classes of creditors and stockholders of the Debtor; and that it may have such other and further relief in the premises as the nature of the case may require and as to this Court may seem proper.

New York, N. Y.,
July 30, 1940.

City Bank Farmers Trust Company, as
Trustee as aforesaid,
By Nelson Stuart,
Trust Officer.

Mitchell, Taylor, Capron & Marsh,
20 Exchange Place,
New York, N. Y.

Winston, Strawn & Shaw,
First National Bank Building,
Chicago, Illinois,
Attorneys for City Bank Farmers Trust Company, as Trustee as aforesaid.

John B. Marsh,
Edward E. Watts, Jr.,
Anthony L. Michel,
Of Counsel.

Filed Aug. 1, 1940.

681 And on, to wit, the 1st day of August, A. D. 1940, came the Independent Committee for Protection of Chicago Milwaukee and St. Paul and Pacific R. R. Co. Bondholders by its attorneys and filed in the Clerk's office of said Court its certain objections in words and figures following, to wit:

682 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF THE INDEPENDENT COMMITTEE FOR PROTECTION OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY BONDHOLDERS TO THE MODIFIED PLAN OF REORGANIZATION AS APPROVED BY THE INTERSTATE COMMERCE COMMISSION UNDER ORDER DATED JUNE 4, 1940 AND CERTIFIED TO THIS COURT ON JUNE 14, 1940.

Comes now the Independent Committee for Protection of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bondholders, (an intervenor in the proceedings befor the Interstate Commerce Commission) and objects to the modified plan of reorganization approved by supplemental order of the Interstate Commerce Commission dated June 4, 1940 and presents its claims for equitable treatment as follows:

(1) The plan is not fair and equitable within the requirements of Section 77 of the Bankruptcy Act, as amended, insofar as the preferred and common stock to be issued to junior bondholders are deprived of the right to vote for the period of the voting trust therein provided.

(2) That the non-voting stock offered to junior bondholders entitled to participate in the plan is not a fair and reasonable equivalent of the interests of the affected bondholders.

(3) That the provisions for the voting trust contained in the modified plan discriminate unfairly against bondholders who are to receive preferred and common stock.

Wherefore, the objector prays that the modified plan of reorganization as certified by the Interstate Commerce Commission be modified by eliminating therefrom the provision for a voting trust.

The objector asks leave to be heard in support of the aforesaid objections.

Dated, New York,
July 30, 1940.

Respectfully Submitted,
Julius Weiss,
Attorney for the Independent Committee for Protection of Chicago, Milwaukee, St. Paul and Pacific Railroad Company Bondholders,
122 East 42nd Street,
New York City.

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700 And on, to wit, the 1st day of August, A. D. 1940, came the Terre Haute Income Mortgage Bondholders Committee by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit: Filed Aug. 1, 1940.

701 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF TERRE HAUTE INCOME MORTGAGE BONDMOLDERS' COMMITTEE TO MODIFIED PLAN OF REORGANIZATION OF DEBTOR AND CLAIM FOR EQUITABLE TREATMENT.

William T. Bruckner, Percy B. Eckhart and James H. Orr, as a Committee for the protection of holders of Terre Haute Income Mortgage Fifty-Year Gold Bonds, represent that their Committee is a "party in interest" within the meaning of the order of this Court dated June 21, 1940.

The Committee was organized as of July 1, 1940, and is in the process of registering with the Securities and Exchange Commission in accordance with the Securities Act of 1933, as amended. Pending the completion of the legal requirements preparatory to solicitation of the Terre Haute Income Mortgage Bonds, the Committee considers it imperative to present its objections to the plan of reorganization of the Debtor within the time recited in the order of June 21, 1940.

Without Justification in Law or in Fact, the Modified Plan of Reorganization of the Debtor Proposes a Modification of the Rights of the Terre Haute Bondholders.

The Interstate Commerce Commission has found as a fact that the Terre Haute bondholders are not "such creditors of the Debtor as would be bound as a class by a confirmed plan of reorganization which divested them of their existing liens upon the Terre Haute properties." Notwithstanding this lack of jurisdiction, the Commission includes in its plan of reorganization a proposal for the modification of the existing rights of the Terre Haute bondholders. This inequitable objective is sought to be accomplished by threatening a rejection of the existing lease between the Debtor and the Terre Haute unless substantially all of the Terre Haute bondholders agree to a new lease upon such terms as will result in (a) a modification of the interest rate on the Terre Haute bonds from five per cent (5%) (Southern Indiana Railway bonds from four per cent (4%) to two and three-quarters per cent (2¾%) fixed interest and one and one-half per cent (1½%) contingent interest, which contingent interest will be dependent upon the available net income of the entire system of the reorganized Milwaukee; (b) the waiver by the Terre Haute of all equipment vacancies existing prior to January 1, 1939; and (c) such provisions in a new lease as shall be deemed appropriate to facilitate a consolidation of the properties of Terre Haute with those of the reorganized Milwaukee.

If the existing lease of the Terre Haute properties by the Debtor had proven an unprofitable venture for the Debtor, there might be some justification for the Debtor
702 seeking to relieve itself of a disadvantageous contract in these proceedings. The contract, however, has not been unprofitable to the Debtor; on the contrary, the arrangements has been admitted by all to have been mutually advantageous to both the Milwaukee and Terre Haute. The earnings of the Terre Haute have resulted in a substantial profit to the Debtor for each of the nineteen years in which the lease has been operative.

The Terre Haute bondholders are under no legal or moral duty to contribute to the bondholders of the Milwaukee and the Court should not permit the Debtor to threaten to reject a contract profitable to itself for the purpose of

obtaining a better bargain at the expense of the Terre Haute bondholders who owe no duty to the Milwaukee bondholders.

The inequity of the plan proposed by the Interstate Commerce Commission and now before this Court lies in presenting to the holders of the Terre Haute bonds alternative courses which it has no right to impose and which are unfair as well—a choice between modification of substantive rights under the lease or the rejection of a contract which has been profitable and satisfactory to both lessor and lessee for over nineteen years.

Claim for Equitable Treatment.

In order to afford fair and equitable treatment to the Terre Haute and its security holders, the modified plan of reorganization of the Debtor should be disapproved by the Court in respect of the matters affecting the Terre Haute and its bondholders. The claims of the Committee for the Terre Haute Income Mortgage bondholders for fair and equitable treatment are as follows:

1. That the existing lease of the Terre Haute properties to the Milwaukee should be adopted by the reorganized Debtor.

2. That the Trustees of the Debtor should make good the equipment vacancies under the lease and under the mortgages securing the Terre Haute bonds.

Respectfully Submitted,
Chicago, Terre Haute and Southeastern Railway Company Income Mortgage Bondholders Committee,
William T. Bruckner,
Percy B. Eckhart,
James H. Orr,
Committee.

West & Eckhart,
Counsel.

690 And on, to wit, the 1st day of August, A. D. 1940, came the Continental Illinois National Bank and Trust Company of Chicago by its attorneys and filed in the Clerk's office of said Court its certain Objections in words and figures following, to wit:

Filed Aug. 1, 1940. 691 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

OBJECTIONS OF CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE FOR CHICAGO, TERRE HAUTE AND SOUTHEASTERN RAILWAY COMPANY FIRST AND REFUNDING MORTGAGE BONDS, TO MODIFIED PLAN OF REORGANIZATION OF CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILWAY COMPANY, AND CLAIM FOR EQUITABLE TREATMENT.

Continental Illinois National Bank and Trust Company of Chicago (hereinafter called the "Trustee"), as Trustee under a Trust Indenture (hereinafter called "Trust Indenture") dated December 1, 1910, from Chicago, Terre Haute and Southeastern Railway Company (hereinafter called "Terre Haute") to Illinois Trust and Savings Bank and William H. Henkle, Trustees, securing an issue of Terre Haute 5% First and Refunding Mortgage Fifty Year Gold Bonds (hereinafter called "Terre Haute First Mortgage Bonds") in the maximum principal amount of $20,000,000, of which bonds of the principal amount of $8,056,000 are outstanding in the hands of the public, files herewith its objections to the Modified Plan of Reorganization of Chicago, Milwaukee, St. Paul and Pacific Railway Company (hereinafter called the "Plan") filed by the Interstate Commerce Commission with the Clerk of this Court, and its claim for equitable treatment, but by so doing does not intend to intervene, appear generally, or in any other manner subject the Trustee, the Terre Haute First Mortgage Bonds or their respective holders to the jurisdiction of the Court in this proceeding, as to the Plan or otherwise.

Preliminary.

The Trust Indenture provides in Article V, Section 5, that:

> "The Trustees shall at any time, take such steps as the corporate Trustee, in its discretion, shall deem advisable to protect their interest and the interests of the First and Refunding Bondholders hereunder in respect of any bonds, obligations or stocks which may at the time be subject to the lien hereof."

The Plan proposed by the Interstate Commerce Commission for the approval of this Court, in the opinion of the Trustee and its counsel, gravely and unwarrantedly jeopardizes the interests of holders of Terre Haute First Mortgage Bonds. Objections to the Plan and claims for equitable treatment have been filed by Terre Haute, Charles B. Roberts III, John E. Blunt, Lemuel A. McHenry and Roger H. Williams, as a Committee representing Terre Haute First Mortgage Bonds, Southern Indiana Railway Company First Mortgage Four Per Cent Bonds, and 692 Belt First Mortgage Five Per Cent Bonds, and by The First National Bank of Chicago, as Trustee under an Indenture securing Terre Haute's Income Mortgage Fifty-Year Gold Bonds in the principal amount of $6,500,000, of which bonds of the principal amount of $6,336,000 are now issued and outstanding in the hands of the public. The Trustee, in addition to the Objections and Claim for Equitable Treatment hereinafter set forth, joins in each and every objection and claim for equitable treatment urged by said Terre Haute, said Committee, and said The First National Bank of Chicago, as Trustee.

Objections.

The Plan Is Not Fair and Equitable to the Holders of Terre Haute First Mortgage Bonds and Does Not Afford Due Recognition of Their Rights Created by and Existing Under the Trust Indenture and the Lease (hereinafter called the "Lease") from Terre Haute to Chicago, Milwaukee and St. Paul Railway Company dated July 1, 1921.

1. More than five years has elapsed since trustees were appointed in this proceeding for reorganization of Chicago, Milwaukee, St. Paul and Pacific Railway Company (hereinafter called the "Milwaukee"). There can be no question that ample time has been afforded the Milwaukee trustees to determine whether the affirmance of the Lease is or is not for the best interests of the trust estate and of any reorganized company operating the Milwaukee lines. It is apparently not disputed that, as found by the Interstate Commerce Commission, the Lease is a valuable asset of the Milwaukee. Therefore, the only purpose, whether intended or not, which can be served by postponement or affirmance

of the Lease is to coerce holders of securities of Terre Haute (over whom the Court concededly has no jurisdiction in these proceedings), largely unorganized and unprepared for immediate operations of Terre Haute as an independent unit, to make a valuable lease even more valuable to the Milwaukee by a forced gratuity from themselves to the present holders of securities of the Milwaukee. Under such circumstances this Court to do equity to Terre Haute security holders should not countenance further delay in the affirmance of the lease by the Milwaukee trustees.

2. Moreover, such an affirmance is required in order to do equity to the holders of Milwaukee securities. It is admitted by the Interstate Commerce Commission, and apparently by all parties in interest, that over a period of years the income and savings to Milwaukee, under any system of accounting suggested, from operations under the Lease exceed by well over a million dollars per annum the cost to the Milwaukee trustees under the Lease, including all interest on securities at the present rate required to be paid by Milwaukee under the Lease. The Interstate Commerce Commission, as the basis for reducing the fixed interest to be paid to Terre Haute security holders and those of affiliated lines by about $420,000, urges that it must do so to keep total fixed interest charges of the whole Milwaukee system at not to exceed $4,270,000 a year. Obviously, the Milwaukee system would be justified in increasing its fixed charges by $420,000 to increase its net revenue and savings by upwards of $1,000,000 per year. Equally obviously, if this revenue of more than $1,000,000 per annum is to be lost by rejection of the Terre Haute lease, fixed charges of the system should be reduced by this amount, thus necessitating reducing the amount of new first mortgage bonds of the reorganized Milwaukee by upwards of $25,000,000. Under such circumstances the rejection of the existing lease would increase and not decrease the difficulties of effecting a reorganization along the lines of the 693 capital structure set forth in the Plan approved by the Interstate Commerce Commission.

3. If the Lease be rejected, such rejection must relate back to June 29, 1935, the date of the commencement of these proceedings. In such case the trustees of Milwaukee must account for and pay in cash, as an expense of administration, to Terre Haute all profits and savings realized

through the operation of the Terre Haute over and above the rental actually paid. The Trustee is informed that such profits and savings over and above actual rental paid are well in excess of five millions of dollars. The trustees of Milwaukee must also account for and pay in cash, as an expense of administration, to Terre Haute reasonable rental for all equipment and rolling stock of Terre Haute removed from its lines and used by the trustees from June 29, 1935, to date of replacement or payment for such equipment and rolling stock. Payment in cash an an expense of administration must, of course, also be made upon rejection of the Lease for all usable equipment and rolling stock taken from the Terre Haute lines which the Milwaukee trustees are unable to replace in kind or with other equipment equal in value satisfactory to Terre Haute as suitable for its operations. The Trustee is informed that such removed equipment has a value largely in excess of $2,000,000.

4. Upon rejection of the Lease and payment of upwards of $5,000,000 in cash by the Milwaukee trustees to Terre Haute for profits and savings over and above rental accrued to the Milwaukee trustees under the terms of the Lease since June 30, 1935, upon payment in cash by the Milwaukee trustees of reasonable rental for all equipment and rolling stock of Terre Haute used by them, and upon restoration to Terre Haute of suitable equipment and rolling stock or payment of its value in an amount upwards of $2,000,000, Terre Haute will be in a position to consider independent operation. In this connection, Victor V. Boatner, railway expert, in a report on the Terre Haute, dated September, 1938, prepared at the request of The First National Bank of Chicago, as Trustee of Terre Haute Income Bonds, makes this pertinent comment:

> "Results of independent operation can only be estimated, but sufficient evidence is available as to revenues, expenses and income, to permit a supported conclusion that such an operation would prove successful. Were the Terre Haute deprived entirely of the Milwaukee fuel coal revenue and retained its other traffic and revenues, it would still be able to operate at a ratio of expense to revenue, based on 1937 levels, that would yield substantial income in excess of interest requirements. Even on the low traffic levels that existed in 1933 and 1934 it is estimated income would be more than sufficient to meet the interest requirements."

The Court must, however, of course consider whether the Plan for Milwaukee will still be practicable after payment by the Milwaukee trustees to Terre Haute of upwards of five million dollars in cash, and after the loss to Milwaukee of net operating revenue presently enjoyed from Terre Haute of upwards of a million dollars. Such cash outlays and diminution of income can, it is respectfully submitted, be avoided and only be avoided by affirmance rather than rejection of the Lease.

5. Since the Lease is valuable to the Milwaukee estate, the value of the Terre Haute properties exceeds the face amount of both the First Mortgage and Income Bonds outstanding, its income largely exceeds the present interest charges on both, and it could in all probability, as stated by Boatner in the excerpt, supra, conduct a profitable independent operation, there would seem to be no justification whatsoever for asking the Terre Haute First Mortgage Bonds or the Terre Haute Income Bonds to accept any reduction in interest rate as a condition to affirmance of the Lease by the Milwaukee trustees. But in no event can the holders of First Mortgage Bonds, which, as recognized by the Interstate Commerce Commission, have a
694 paramount lien and prior claim to interest over the Terre Haute Income Bonds, properly be asked to reduce their interest rate regardless of what may be requested of holders of junior securities.

Claim For Equitable Treatment

In Order to Afford Fair and Equitable Treatment to the Holders of Terre Haute First Mortgage Bonds, the Plan Insofar as It Affects said First Mortgage Bonds Should Be Disapproved by the Court. The Claims of the Trustee for Fair and Equitable Treatment Are as Follows:

1. That the Lease shall be adopted forthwith by the Milwaukee trustees in such manner as to be binding upon the new company formed under any plan of reorganization of Milwaukee.

2. That if this claim be rejected by the Court, then in the alternative, the Milwaukee trustees, as a condition precedent to rejection of the Lease, shall forthwith, after prompt accounting under the direction of the Court, pay in cash to Terre Haute the profits and savings accrued to said trustees from the Lease over and above rentals actually paid to Terre Haute.

3. That as a further condition precedent to such rejection of the Lease, the Milwaukee trustees shall forthwith,

after a prompt accounting under the direction of the Court, pay in cash to Terre Haute reasonable rental for all equipment and rolling stock of Terre Haute removed from the Terre Haute lines and used by the Trustees on other lines from June 29, 1935, to date.

4. That as a further condition precedent to such rejection of the Lease, the Milwaukee trustees shall also be required forthwith to replace all equipment and rolling stock usable at time of removal, removed by them from the Terre Haute lines, either in kind or with equipment of equal value satisfactory to Terre Haute as being suitable for operation on its lines, or pay in cash the fair value of any equipment which it is unable so to replace as determined by a prompt accounting under the direction of the Court.

5. That upon such rejection, the Milwaukee trustees or the reorganized company shall, at the request of Terre Haute, operate the Terre Haute lines for the account of Terre Haute until Terre Haute elects to conduct an independent operation or to affiliate with some other carrier.

Conclusion.

The Trustee finds itself unable to recommend to the holders of Terre Haute First Mortgage Bonds any modification of the Lease which would reduce the interest to be paid on said bonds or otherwise jeopardize the rights or security of the holders of said bonds.

Dated Chicago, Illinois, July 31, 1940.

Respectfully submitted,

Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Indenture dated December 1, 1910, between Chicago, Terre Haute and Southeastern Railway Company and Illinois Trust and Savings Bank and William H. Henkle, Trustees, securing the First and Refunding Mortgage Fifty Year Gold Bonds of Terre Haute and Southeastern Railway Company.

By F. E. Musgrove,
Vice President.

Mayer, Meyer, Austrian & Platt,
Attorneys for Continental Illinois National Bank and Trust Company of Chicago, as Trustee as aforesaid.

Entered Sept. 3, 1940.

703 And afterwards, to wit, on the 3rd day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

704 Order No. 703.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER AUTHORIZING TRUSTEES TO ENTER INTO CONDITIONAL SALE AGREEMENTS FOR THE PURCHASE OF 18 DIESEL SWITCHING LOCOMOTIVES.

This day coming on to be heard the verified petition of the Trustees for authority to acquire under Conditional Sale Agreements, from Electro-Motive Corporation, nine (9) 600 horsepower Diesel switching locomotives, at a cost of $61,838.00 each, and three (3) 1000 horsepower Diesel switching locomotives, at a cost of $82,588.00 each; from American Locomotive Company, three (3) 1000 horsepower Diesel switching locomotives, at a cost of $82,440.00 each, and one (1) 1000 horsepower Diesel switching locomotive, at a cost of $77,500.00; and from the Baldwin Locomotive Works, two (2) 1000 horsepower Diesel switching locomotives, at a cost of $82,525.00 each, all of said Conditional Sale Agreements providing for delivery at Milwaukee, Wisconsin, and for payment in ninety-six (96) equal monthly installments aggregating $14,599.00 each, including interest at the rate of two per cent (2%) per annum; and it appearing from said petition that the purchase of said eighteen (18) Diesel switching locomotives is for the purpose of improving switching service at various stations on lines of the Trust Estate and effecting economies on the railroad thereof, and that the savings in switching costs resulting from the use of said eighteen (18) Diesel switching locomotives will be more than sufficient to make the monthly payments hereinabove specified, and that the Trustees deem it to be in the interest of the Trust Estate and the creditors and stockholders concerned that said

eighteen (18) Diesel switching locomotives be acquired; and it also appearing that due notice and a copy of said petition, to which was attached the proposed form of Conditional Sale Agreement, have been served on each party to this proceeding entitled to notice, and the Court having considered the petition, heard the statements of counsel and being fully advised in the premises, it is

Ordered, that Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor herein, be, and they are hereby authorized to acquire, under Conditional Sale Agreements, from Electro-Motive Corporation, nine (9) 600 horsepower Diesel switching locomotives, at a cost of $61,838.00 each F. O. B. Milwaukee, Wisconsin, and one (1) 1,000 horsepower Diesel switching locomotive, at a cost of $82,588.00, F. O. B. Milwaukee, Wisconsin, or a total cost of $639,130.00, payable in ninety-six (96) equal monthly installments of $7,210.00 each, including interest at the rate of two per cent (2%) per annum; from Electro-Motive Corporation, two (2) 1,000 horsepower Diesel switching locomotives, at a cost of $82,588.00 each, F. O. B. Milwaukee, Wisconsin,
705 or a total cost of $165,176.00, payable in ninety-six (96) equal monthly installments of $1,863.00, including interest at the rate of two per cent (2%) per annum; from American Locomotive Company, three (3) 1,000 horsepower Diesel switching locomotives, at a cost of $82,440.00 each, F. O. B. Milwaukee, Wisconsin, and one (1) 1,000 horsepower Diesel switching locomotive, at a cost of $77,500.00, F. O. B. Milwaukee, Wisconsin, or a total cost of $324,820.00, payable in ninety-six (96) equal monthly installments of $3,664.00 each, including interest at the rate of two per cent (2%) per annum; from The Baldwin Locomotive Works, two (2) 1,000 horsepower Diesel switching locomotives, at a cost of $82,525.00 each, F. O. B. Milwaukee, Wisconsin, or a total cost of $165,050.00, payable in ninety-six (96) equal monthly installments of $1,862.00 each, including interest at the rate of two per cent (2%) per annum; said Conditional Sale Agreements to be substantially in manner and form as set forth in the copy of Conditional Sale Agreement attached to and make a part of said petition and marked "Exhibit A," all of said monthly payments to be made from funds in hand derived from operation of the property of the Trust Estate; and

It is further ordered, (1) that, except as provided in Subdivision 4 of this paragraph, the trusteeship shall not be terminated, nor shall the Trust Estate thereunder be surrendered by the Trustees, or their successor or successors, unless as a condition to the termination of the trusteeship of the Debtor herein, whether pursuant to a plan of reorganization or otherwise, all the obligations then existing or to accrue, of the Trustees herein, under said Conditional Sale Agreements, shall be assumed as a general obligation by Debtor herein, or by any other corporation, or any receiver or receivers in equity, that shall succeed to the Trustees herein, in the possession of not less than seventy-five per cent (75%) of the owned lines of railroad comprising the Trust Estate; (2) that in case of any sale or conveyance of not less than seventy-five per cent (75%) of all of said owned lines of railroad, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept said Conditional Sale Agreements or to disaffirm the same (but, if acquiring not less than seventy-five per cent (75%) of all of said owned lines of railroad for the purpose of transferring them to a corporation formed for the purpose of reorganization, any such purchaser shall not incur any personal liability under or in respect of said Conditional Sale Agreements, provided such transferee corporation shall assume, as a general obligation, all the obligations of the Trustees herein under said Conditional Sale Agreements); (3) that in case any corporation, or any receiver or receivers in equity, shall so succeed the Trustees herein in the possession of not less than seventy-five per cent (75%) of all of said owned lines of railroad, and shall assume, as a general obligation, all the obligations of the Trustees herein then existing and to accrue under said Conditional Sale Argeements, the Trustees herein shall thereupon be relieved from any further liability under or in respect of said Conditional Sale Agreements; and (4) that in the event that upon the confirmation of a plan of reorganization, or upon the dismissal or termination of this proceeding, neither the Debtor nor any other corporation, or receiver or receivers in equity, shall alone succeed to the possession of seventy-five per cent (75%) of all of said owned lines of railroad, then all of the unpaid installments of the purchase price under said Conditional Sales Agreements, together with accrued interest thereon, and all of the other obligations and liabilities of

the Trustees herein under said Conditional Sale Agreements, shall become immediately due and payable on the date of such confirmation, dismissal or termination, and
the Court will make such provision for the payment
706 thereof as will be equitable. The term "said owned lines of railroad," as used herein, means the owned mileage of the Trust Estate now held by the Railroad Trustees.

It is further ordered, that the obligations of the Trustees in respect of said Conditional Sale Agreements shall be obligations of the Trustees solely as Trustees of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and not as individuals, and shall constitute only the general obligations of the estate of which they are Trustees.

It is further ordered, that the Conditional Sale Agreements, or any other instrument which the Trustees are authorized to execute under the terms of this order, or are required or permitted to execute under the terms of said Conditional Sale Agreements, may be executed for and on their behalf by any one or more of them, or by such officer, agent or employe of the Trustees as they may by resolution, duly adopted, authorize to execute the same.

Enter:

Barnes,
District Judge.

Dated: September 3, 1940.

707 And afterwards, to wit, on the 4th day of September, A. D. 1940, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered Sept. 4, 1940. 708 Order No. 706.

IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

ORDER.

This cause coming on to be heard upon the joint petition of Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America for leave to intervene in this cause, and the Court having heard the arguments of counsel and being fully advised in the premises:

It is hereby ordered that the prayer of said petition be and it is hereby granted and that Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America be and they hereby are permitted to intervene generally in this proceeding and without further act or order are hereby admitted and constituted as general parties in this proceeding and as such intervenors they shall have the right to be heard on all questions arising herein.

It is further ordered that notices of all motions and proceedings and copies of all motions and petitions hereafter filed herein relating to the plan of reorganization, the Chicago, Terre Haute and Southeastern Railway Company, the lease from the Chicago, Terre Haute and Southeastern Railway Company to the Debtor, the Bedford Belt Railway Company First Mortgage 5% bonds, due July 1, 1938, the Southern Indiana Railway Company First Mortgage 4% bonds, due February 1, 1951, the Terre Haute First and Refunding Mortgage 5% bonds, due December 1, 1960, or the Terre Haute Income Mortgage 5% bonds, due December 1, 1960, be given to said Massachusetts Mutual Life Insurance Company and The Prudential Insurance Company of America by serving copies thereof upon their attorneys, Messrs. Ernest S. Ballard and Minier Sargent, 120 South La Salle Street, Chicago, Illinois; but it shall not be necessary to give said intervenors notices or copies of any other matters, proceedings or papers.

Enter:

Igoe,
District Judge.

Dated September 4, 1940.

1407 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—60463)

The following proceedings were had before the Hon. Michael L. Igoe, Judge of the United States District Court, in the United States Court House, Chicago, Illinois, commencing on the 4th day of September, A. D. 1940, pursuant to notices served on the parties herein.

Appearances:

Messrs. A. N. Whitlock, C. S. Jefferson and M. L. Bluhm, appearing on behalf of the Trustees of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Messrs. Sidley, McPherson, Austin & Burgess, by Mr. K. F. Burgess and Mr. D. F. Smith, appearing on behalf of the Institutional Investors Mutual Savings Bank Group.

Mr. C. M. Clay, Assistant General Counsel, Reconstruction Finance Corporation, Washington, D. C.

1408 Messrs. Pierce & Greer, by Mr. Frank C. Nicodemus, Jr., representing the Debtor.

And other counsel as will be shown in the record in their order of appearance.

Thereupon, the Debtor, to maintain the issues on its behalf, introduced the following evidence, to-wit:

HENRY A. SCANDRETT, called as a witness on behalf of the Debtor, being first duly sworn, testified as follows:

Direct Examination by Mr. Nicodemus.

Mr. Nicodemus: I would like to call Mr. Henry Scandrett as the first witness. This witness is called on behalf of the Debtor.

Q. Mr. Scandrett, you are one of the trustees of the Debtor, Chicago, Milwaukee, St. Paul and Pacific Railroad Company?

A. I am.

1409 Q. You first appeared as a witness before the Interstate Commerce Commission on August 6, 1935, is that correct?

A. It was in August, 1935.

Q. And you then gave your previous history and previous railroad experience?

A. That is correct.

Mr. Nicodemus: It is unnecessary to repeat it now.

Q. Now, the last appearance that you made before the Interstate Commerce Commission was on September 20th, 1937. Since that time three annual reports have been published covering the operations of the property for the calendar years 1937 and 1938 and 1939. Have you copies of those reports available to introduce into evidence?

A. I can obtain them. I haven't them here.

Q. Well, that is very easily done because I have them here to present to you.

A. I thought my last appearance as a witness was in March, 1938, but I am not sure as to that.

Mr. Nicodemus: I thought it was as I stated.

The Witness: It is immaterial.

Mr. Nicodemus: However, it doesn't matter.

The Witness: No.

1410 Mr. Nicodemus: You did not introduce the '37 report?

The Witness: No.

Mr. Nicodemus: May I inquire, if the Court please, how we shall number or letter these exhibits? There is a series of exhibits in the record from the Interstate Commerce Commission that starts from No. 1 and goes forward.

The Court: Why don't you ask the stenographer what is the most convenient way?

(Discussion.)

The Court: All the exhibits that you are going to introduce here will be designated by numerals and they will all be known as Debtor's Court Exhibits.

Mr. Nicodemus: Correct.

Then I will offer in evidence the annual reports for the years 1937, 1938 and 1939 and ask that they be marked as Debtor's Court Exhibits 1, 2 and 3, respectively.

The Court: They may be admitted.

(The said documents, so received in evidence by the Court were marked DEBTOR'S COURT EXHIBITS 1, 2 and 3, and are in words and figures as follows, to-wit:)

1411 Mr. Nicodemus: Q. Mr. Scandrett, before I reach the matters that we asked you to prepare yourself to answer or give evidence on and while we are still on

the subject of annual reports, there are certain facts stated in certain of the earlier reports that I would like to have made basic or primary evidence in this court proceeding. The first report published by the Debtor was in 1928, was it not?

A. Yes, for the period beginning either January 13th or January 14th, 1928.

Q. Well, in your first annual report, which is stated to be the report for the year ending December 31, 1928, I find the following statement—

Mr. Burgess: Your Honor, that all is in the report. I thought at the very outset it would help us all to conserve time if it could be understood that there will be no duplication. The record before the Commission has been certified to the Court and is here. There is no use in duplicating it. And I object to this evidence as a duplication.

Mr. Nicodemus: Well, to begin with, the fact that this report was offered in evidence does not prove the facts stated in the report, and these particular facts I want to prove by this witness. I want to prove that these
1412 facts are correctly stated in the report. Then I want to examine him with reference to these facts.

The Court: You say you want to prove that they are correctly stated?

Mr. Nicodemus: Yes.

The Court: The report is in evidence now, isn't it?

Mr. Nicodemus: It was filed with the Interstate Commerce Commission.

The Court: If you admit it is true, why do you want to go into it again?

Mr. Nicodemus: If I admit it is true?

The Court: I thought you said you admitted it is true.

Mr. Nicodemus: I wanted him to prove it.

Mr. Burgess: It is an exhibit before the Commission. It has a number.

The Court: You want to prove the substance—

Mr. Nicodemus: If I may proceed with my question?

The Court: —of what is contained in that particular document?

Mr. Nicodemus: Yes, but I want to examine him as to those facts.

1413 Mr. Clay: Your Honor, I wish to join in the objection.

The Court: Well, now, let us see. Is it your under-

standing that we can have a trial de novo here as to the whole thing?

Mr. Nicodemus: It is.

The Court: Well, I don't understand it that way.

Mr. Nicodemus: Well, the Act is very clear. And that is one of the main legal points that will be argued later on. The statute is clear that the Court takes evidence.

The Court: I understand the Court takes evidence, but I do not understand the Court is going to go over all the evidence that was heard by the Commission.

Mr. Nicodemus: This was not heard.

The Court: If that be true, what was the reason for the hearing before the Commission?

Mr. Nicodemus: This was not introduced before the Commission except that the report was filed. There was no proof of the facts.

The Court: Well, there was no denial of it. So I imagine they accepted them as true.

Mr. Nicodemus: Well, that would not—

1414 The Court: That is my judgment. Isn't that right?

Mr. Burgess: Why, certainly. It was an exhibit before the Commission and in so far as it was not controverted there it is a verity in the case.

As far as the trial de novo is concerned, that is perfectly absurd under the Act. The Act provides—

The Court: Well, let me see, Mr. Nicodemus. You say this exhibit was introduced down there and no objection was made to it. None of the facts set forth in it were disputed although you had an opportunity to go into it at that time. Now, after the Commission has concluded its hearing you come here in the guise of making objections and you want to go into that whole thing from the beginning again. I don't think I will sustain that sort of proceeding.

Mr. Nicodemus: Well, first of all I want to claim the right absolutely to offer evidence de novo on any subject. I don't think you can have a court hearing under this Section 77 where the Court is not free to take evidence on all points.

The Court: Oh, I know, but there is some limit to it.

Now, surely it was never intended that you were to
1415 have a trial de novo here. If that is going to be your position we might just as well meet that sort of situation right at the threshold and have a decision or

it. I don't think you are justified in that position. If that is going to be your position I can rule on that without much trouble. If you want to introduce other evidence about other matters, all right. If you think you are going to have a trial de novo here, why I am against you.

Mr. Nicodemus: Well, all right. May I just make it clear that we make the claim of a right to a trial de novo?

The Court: Yes.

Mr. Nicodemus: Well, then, I won't introduce the matter as I had intended to, but I will ask Mr. Scandrett:

Q. Whether there was not a rate case commenced some time in 1926 to get a proper adjustment for class rates in the western territory?

A. Well, there had been—

Q. Can I refresh your recollection on that?

A. —very, very many cases, of course.

Q. Can I refresh your recollection by calling your
1416 attention to the marked passage in the report for the year 1928?

A. This report refreshes my recollection that there was a proceeding pending before the Interstate Commerce Commission in 1926 on an application by the carriers in the western district for a five per cent increase in their freight rates. It does not say "class rates." All freight rates.

Q. And that application was denied?

A. That report also says, which was the fact, that the Commission denied that application but pointed out in its decision that the rates in the western trunk line territory were relatively low as compared to the surrounding rate groups.

The report then goes on to state the carriers in that territory filed an application to increase rates and that it was pending at the time of filing this report.

Q. Will you further refresh your recollection by reference to that report and advise whether there had not been a number of rate reductions prior to that time that depressed the rate level in that territory?

A. Well, it is stated here that the freight earnings
1417 per ton mile in 1928 were 10.37 mills as compared with 12.66 mills in 1921 and that this reduction of some eighteen per cent since 1921 reflected two general rate reductions made by the Interstate Commerce Commission and the cumulative effect of rate reductions which had been characterized as the whittling process.

Q. When the Commission denied the application for the five per cent increase they suggested to the carriers that they file applications to get relief specifically in the western trunk line territory to put them on a parity with the other districts?

A. No. I do not understand that they made any suggestion as to carriers filing applications for increased rates; but they did point out that the rates in the western trunk line territory were depressed as compared with rates in other territories.

Mr. Clay: I object, your Honor. The best evidence is the Commission's own order and report.

The Court: Well, he has answered anyhow.

Mr. Nicodemus: Q. Will you, by refreshing your recollection, which you may do by examining the 1929 report, will you state what relief, if any, the Commission gave 1418 you on that application in the year 1929?

Mr. Clay: I object, your Honor. The best evidence, again, is the Commission's report.

The Court: What is it you are trying to prove here, Mr. Nicodemus?

Mr. Nicodemus: What I am trying to prove is, the earnings of this carrier are regulated by the Interstate Commerce Commission and they have been so depressed by the regulatory processes of the Commission that they cannot be used as a basis for valuing the property under Section 77; and we will deal with that subject at great length in our argument.

The Court: You want to go into the whole question of the rates that have been made heretofore by the Interstate Commerce Commission?

Mr. Nicodemus: No. I merely want to prove that the earning power of this particular carrier has been unduly depressed by the same Interstate Commerce Commission that reports to the plan, under which it says the earning power of the Debtor is so weak that it will not support the capitalization.

The Court: That is going into all the facts sur- 1419 rounding the making of these different rates. You say they are wrong?

Mr. Nicodemus: No. I want to show just the result of the Act—

The Court: You say the rates are wrong; you say they are depressed? That is the word you used.

Mr. Nicodemus: Well, the Commission itself in disposing of the 1926 case said they were depressed. Now I want to show that four years later, after keeping this case pending for three years, they made some adjustment.

Mr. Burgess: Your Honor, that is clearly all a matter of argument. We will concede that this carrier has been subject to regulation by the Interstate Commerce Commission since 1887 when the Interstate Commerce Commission Act was passed.

The Court: What you are trying to prove, as I take it, is that this condition was brought about because of the regulatory operation of the Interstate Commerce Commission?

Mr. Nicodemus: I want to bring out—I just wanted to bring out by this first witness the impact of regulation on this carrier's earnings.

The Court: As a result of the rates made by the
1420 rates made by the Interstate Commerce Commission?

Mr. Nicodemus: Yes.

The Court: Oh, well, I will sustain that objection.

Mr. Nicodemus: All right.

The Court: If you want to make a political display in some case here you are wasting your time, my friend. Go ahead and prove your law suit. I read your brief. If you leave out half of the politics in there and confine yourself to the issues in this case you would perhaps make a better impression upon the Court.

Mr. Nicodemus: I will ask one further question on this subject if I may and that is this:

Q. This rate matter was not disposed of finally, Mr. Scandrett, until the end of the calendar year 1931; is that correct?

A. Well, I haven't the dates in mind. I accept your statement of that.

Q. Mr. Scandrett, as we understand the position of yourself and your co-trustees, so far as you can speak for them in this proceeding, your attitude is one of strict neutrality
as regard to the plan of reorganization which has been
1421 certified to this Court by the Interstate Commerce Commission; is our understanding correct?

A. Mr. Nicodemus, I don't know exactly what you mean by "strict neutrality" towards the plan of reorganization. The trustees are not taking any part in any controversy between security holders as to the allocation of securities

and related matters. We have put into the record what we deem to be pertinent facts and we have furnished on the request of various parties to the record very many exhibits and statements at different times. The primary interest of the trustees is in a sound reorganization of the property without unnecessary delay because they believe that is greatly to the interest of the property we are administering.

Q. And without unnecessary sacrifice of any invested capital?

A. Well I say a sound reorganization. You can include, if you want it, a fair reorganization.

Q. In your report for the year 1939, which you introduced this morning, you stated that the trustees regretted that the Commission found that the equity of the company's preferred and common stock is of no value and that the stockholders are not entitled to participate
1422 therein. That is still your position; isn't it?

A. Mr. Nicodemus, I have always hoped that there would be sound justification for participation by the stock in the new capital set-up. I could enlarge on that if you desired.

Mr. Nicodemus: That is quite satisfactory and answers my question.

Q. You voted as a director in favor of the Debtor's original plan and supported it as a witness before the Interstate Commerce Commission. Now, the Debtor's original plan provided for fixed interest charges of $7,147,146 as being safely within the probable earning power of the property. Now, having this in mind, and having also in mind the fact that the insurance group committee subsequently filed a plan that provided for fixed charges closely approximating $7,000,000, may we inquire whether if a prompt reorganization could be brought about by conference or otherwise providing for a much larger allotment of new first mortgage bonds to the present holders of mortgage bonds, would you favor such a reorganization provided the
1423 fixed charges did not exceed the amount provided for in the Debtor's original plan?

A. Well, now, do you mean the plan substantially along the line of the Debtor's original plan?

Q. Yes, sir.

A. Well, at the time that that plan was promulgated, which was in 1935 and was after protracted discussions and negotiations with a group of security holders, I felt with

the future in so far as we could see it that that plan had a very good change of working out. That is five years ago.

Now, in the interval a great many things have happened, some of them quite unfavorable from the standpoint of this railroad and all railroads; and the 1935 plan, I would have very great doubts at this time as to whether it would be a sound plan.

Q. I limited the question to the fixed charges, really.

A. Well, what about contingent charges?

Q. I did not bring that up.

A. Well, but if there are contingent charges, I could not pass or give any opinion on the soundness of the plan without knowing the details of it.

1424 Q. But the first step in working out a plan that would be generally accepted is to get the right fixed charge.

A. Well, that is only the first step, however.

Q. I want to lead you through the first step.

A. One of the worst situations that we had under the old capital set-up was the contingent charges under the present adjustment mortgage.

Q. Well, they will be taken care of in a different way; but I am limiting the question to the fixed charge.

A. Well, I don't think I could give you any opinion without knowing the details of the plan beyond the fixed charge.

Q. Well, all right, Mr. Scandrett.

In answer to a questionnaire that was sent to all of the carriers in 1939 with reference to maintenance you submitted an answer which I think was filed with the Commission, but not in this case, early in the year 1939. Have you a copy of that questionnaire?

The Witness: Have we a copy of that?

Mr. Nicodemus: What I wanted to ask with reference to this questionnaire was this:

1425 Q. Would you make the same reply to those questions, substantially the same reply as to the questions embodied in the questionnaire if they were applied to the year 1939?

A. Well, that was circular No. 26?

Mr. Nicodemus: That was circular No. 26.

A. Dealing I think primarily with the question of deferred maintenance, and with reference to that question, while I have not reviewed the circular lately I would think

my answers would be as they were in 1929, in 1939. In other words, the property at the present time, as it was in 1939, is in a very good state of maintenance.

Mr. Nicodemus: I would like to offer that in evidence as Debtor's Court Exhibit No. 4.

The Court: It may go in.

(The said document so received in evidence by the Court was marked DEBTOR'S COURT EXHIBIT NO. 4, and is in words and figures as follows, to-wit):

1426 Mr. Nicodemus: I had intended to ask a question respecting the capital expenditures made by the trustees in each year of the trusteeship but I am informed that the answer to that question would be covered by an exhibit that is to be introduced through the next witness. So I will pass that question and ask you this question:

Q. Whether you have in mind any capital expenditures for the future, over a period of say five years, that would require capital in excess of probably the amount spent during each of the years of the trusteeship?

A. Mr. Nicodemus, I don't know any one who can forecast with definite assurance what the capital requirements will be over a five-year period.

Mr. Nicodemus: I will exclude the act of God and public enemy.

A. For instance, at the present time we are working out a coordination plan with the Kansas City Southern at Kansas City that involves a rearrangement of trackage and the building of a new bridge jointly by us and the Rock Island, and the capital expenditure with which we will be presently confronted is about a million and a

1427 half dollars. Now, things of that kind come up, extraordinary expenditures, from time to time. And you can't over a relatively long period determine whether they will arise in that period or not.

Now, barring unusual matters of that kind, the best I can do is to hazard my more or less intelligent guess. I would say that our capital expenditures over the next five-year period would not substantially exceed what they have been in the past five years of the trusteeship.

Q. Then you feel you are running along on an even keel and will probably continue to do so unless there is some unforeseen condition that arises; is that correct?

A. Well, I don't know that I would express it just that way.

I think that barring unusual expenditures we can get along on substantially what we have in the last five years. Now, in some of the past five years our capital expenditures were rather low. I am talking on an average figure.

Q. Well, if it should be practicable to reorganize
1428 the Debtor in 1941 on the basis of a plan requiring no cash for interest accrued and unpaid on mortgage bonds now in default, would you need any new money?

A. You mean to start?

Q. Yes.

A. No. We would have enough cash to start now.

Q. You would have enough cash?

A. What the finish would be, of course, would depend on the plan.

You have not indicated in your question anything about what the plan would be.

Mr. Nicodemus: I assumed it is going to be a good plan.

Mr. Burgess: As I understand the question, it is if he did not have to pay out anything he would not have to pay out anything.

Mr. Nicodemus: No. That is not the question.

The Court: What is that? If he did not have to pay out anything he would not have to pay out anything?

Mr. Nicodemus: No; that is not it.

Mr. Burgess: That is what I understood the ques-
1429 tion to be.

Mr. Nicodemus: That is not fair.

Mr. Burgess: He is asking about some hypothetical plan that nobody ever heard of, as I understand it.

Mr. Nicodemus: We will indicate a plan in the proceeding that could be put in without any money. I want to find out if the Commission's plan does not require new money before it can be put into effect.

Mr. Burgess: Your question was, if he did not have to pay out anything he would not have to pay out anything.

Mr. Nicodemus: No; that was not the question.

The Court: What is this? Some kind of a guessing contest? What is it?

Mr. Nicodemus: No. This Commission plan does not—there is a lot of back interest that has to be taken care of in cash. That is apparent. However, it is shown by the plan. So I will pass the question.

I will ask a further question which perhaps Mr. Burgess may not find objectionable.

Q. Assuming the plan certified to the Court by the Interstate Commerce Commission could be put into
1430 effect in the early part of the year 1941 substantially as written, would you require new moneys, and if so, how much, approximately?

A. Now, of course, there again to answer that question you have to make assumptions as to what your operating revenues are going to be and what your operating expenses are going to be; and those assumptions may work out accurately and they may work out quite inaccurately.

We have given that question study; and in giving it study we have thought that we should be conservative in making our estimates both as to revenues and expenses. And on the basis of such studies as we have made, if I had to give a figure today I would say that we ought to have about five to ten million dollars of additional working capital to carry on under that plan.

Q. And that would have to be obtained through the sale of new securities?

A. In some way.

Mr. Nicodemus: That is all with this witness.

The Court: That is all, he said, Mr. Burgess.

1431 Mr. Burgess: I have a few questions, your Honor.

Cross-Examination by Mr. Burgess.

Q. At the time that the so-called standby plan was presented to the Interstate Commerce Commission, what office did you occupy with the Debtor?

A. I was president of the Debtor.

Q. Since that time you have resigned as president of the Debtor, have you not?

A. Yes, sir.

Q. When did you resign as president of the Debtor?

A. My recollection is that it was in May, 1938, Mr. Burgess.

Q. When were you appointed Trustee by the United States District Court of the property of the Debtor?

Mr. Nicodemus: That is all covered by the annual reports.

The Witness: I think in July, 1935, but the appointment of the Trustees had to be confirmed by the Interstate Commerce Commission so the Trustees took over the property on January 1, 1936.

The Court: The record shows who he is and what he is.

Mr. Burgess: Q. You have continuously been a
1432 Trustee of the Debtor throughout?

A. That is correct.

Q. When the plan was presented, the so-called standby plan, by the Debtor, who was the counsel for the Debtor?

A. Mr. Robert T. Swaine.

Q. And Mr. Swaine continued as counsel for the Debtor throughout all the proceedings before the Interstate Commerce Commission up to six or seven weeks ago, did he not?

A. Yes, that is correct.

Mr. Burgess: That is all.

The Court: Mr. Clay, do you have any questions?

Mr. Clay: Yes, thank you, your Honor.

Cross-Examination by Mr. Clay.

Q. Mr. Scandrett, have you read the I. C. C. plan before the Court?

A. Yes.

Q. You are aware there is a provision in the plan for raising additional working capital by the sale of bonds, are you?

A. Yes.

Mr. Clay: That is all.

The Court: Are there any further questions?

1433 Mr. Hoffman: My name is Harry Hoffman.

Cross-Examination by Mr. Hoffman.

Q. Mr. Scandrett, referring to Debtor's Court Exhibit 4, being your report for the Interstate Commerce Commission—have you it before you?

A. No, I have not. Which year is that?

The Court: That is that manuscript your man brought in here this morning.

The Witness: Oh, I think I have a copy here.

Mr. Hoffman: Q. That speaks as of January 15, 1939, is that correct? It is in the upper left hand corner of the first page.

A. Well, I see it was returnable to the Commission on or before January 15, 1939. My impression is that there

was an extension of time and it was filed later, but I am not sure.

Q. Substantially speaking, though, it brings the date up to January 15, 1938.

A. I think that is correct.

Q. Referring to Appendix A, page 1 of the appendix, Maintenance of Way of Structures, Items A to F, inclusive, and H; the statement is made, "An exhaustive study of Maintenance of Way and Structures was made by
1434 respondent in 1935 and a conclusion was reached at that time that there was no deferred maintenance of consequence in the property. Since then maintenance has been adequate for the traffic handled." Was that your opinion at the time this return was made to the Interstate Commerce Commission?

A. Yes, it was.

Q. And it is still your opinion today?

A. It is.

Q. Now, referring to the foot of the same page, the last paragraph, it reads, "For various reasons detailed herein it is our opinion that the property has been satisfactorily and economically maintained, that there is no important amount of deferred maintenance, and that the property as a whole has been substantially built up and improved in the last eight years." That was your opinion at the time it was written?

A. That was not my statement, Mr. Hoffman. That was quoted from the report made by Mr. Hamilton for the Reconstruction Finance Corporation.

Q. Did you subscribe to that at that time?

A. Well, I was not asked to subscribe.

Q. Do you subscribe to it now?

A. I do not think I would disagree with it.

1435 Q. What was the occasion for including that statement if you did not subscribe to it in your report to the Interstate Commerce Commission?

A. I haven't said I did not subscribe to it.

Q. I asked you the question. I thought you said you did not subscribe to it. Was it subscribed to by you? Do you or do you not subscribe to that statement?

A. I think that is a substantially accurate statement. It is a statement of an experienced man in railroading.

Q. Am I correct in assuming you agreed with that statement at the time the report was made by you?

A. Why, I did not agree with it or disagree with it. We put that in as being the opinion of a disinterested party as to the conditions of this property.

Q. But, you do agree with it now?

A. How many times do you have to answer the same question?

The Court: He said he is not in disagreement with it.

Mr. Hoffman: Thank you, sir.

Q. Now, do these statements apply to the property of the Milwaukee and Northern as well as the property of the Debtor as a whole, the statements I have just
1436 read to you?

A. The property as a whole, including the Milwaukee and Northern.

Q. And that would be substantiated, would it not, by the answers on page 1 of statistical circular No. 26 where the statement is made, "No expenditures would be required for the various items therein set forth on account of deferred maintenance"? Is that correct?

A. What page?

Q. The first page of that circular.

A. Well, it says to see Appendix A, B, and C for the answers to those questions.

Q. So that as of the dates of which this report speaks we may take it that there was no deferred maintenance on the Milwaukee and Northern line?

A. No deferred maintenance of consequence.

Q. No deferred maintenance of consequence. Thank you.

The Court? Are there any further questions?

Mr. Reese D. Alsop: If the Court please, what I have to ask Mr. Scandrett is not cross-examination and I only came forward with the thought that your Honor might perhaps wish me to ask questions now on matters that I would want to interrogate him on before we are fin-
1437 ished.

The Court: I suppose as long as you have him here, you might as well finish with him. That may perhaps save bringing him back.

Mr. Alsop: That is what I thought. I am representing the First Lien Bondholders' Committee, bonds which are first mortgages on the lines of the Chicago, Terre Haute & Southeastern Railway. I do not know whether your Honor is familiar with the line. You probably are, however.

The Court: This is a line that runs down to the coal fields and to the Bedford Quarries.

Mr. Alsop: Yes.

The Court: I think I know about it.

Mr. Alsop: I think it would be perhaps convenient and helpful if I should offer in evidence a map to show the lines of the Debtor and the Terre Haute.

Mr. Clay: I object, your Honor. The Terre Haute is not bound by this plan. The plan does not purport to bind the security holders in any manner.

The Court: I understand that they are not bound by any plan you submit, but at the same time they suggest you had better make an agreement. I imagine, though, that somewhere in your record that map is in there.

1438 How about this, Mr. Burgess? Haven't you a map of this system in this record somewhere?

Mr. Burgess: Oh, yes, there are several maps that show the situation.

Mr. Clay: They are little blueprints, your Honor, that are rather hard to read.

The Court: What do you want to show by your map?

Mr. Alsop: I want to show to the Court the lines of the Milwaukee and the lines of the Terre Haute as indicated on here, showing the various mortgaged lines. I think it will be useful. May I show it to your Honor?

The Court: You may admit it. That is No. 5, isn't it?

Mr. Alsop: It would be the Terre Haute Group Exhibit 1.

The Court: This date?

Mr. Alsop: This date, wouldn't it be, your Honor.

The Court: Are you going to have different numbers, then, Mr. Nicodemus?

Mr. Alsop: I think we should.

The Court: All right. Call it Terre Haute Exhibit 1.

Mr. Burgess: Why doesn't your Honor approve them seriatum and show who they are introduced by?

The Court: All right, Exhibit 5 introduced by counsel representing whom?

1439 Mr. Burgess: Representing the Terre Haute First Lien Bondholders' Committee.

Mr. D. F. Smith: Isn't that the same as Exhibit No. 75?

Mr. Alsop: I think that is the small map.

The Court: Oh, well, there is no use in putting in two exhibits.

Mr. Alsop: You mean that is 75 before the Interstate Commerce Commission?

The Court: Yes.

Mr. Alsop: All right. I will withdraw my offer.

The Court: All right. What is your question to the witness?

Cross-Examination by Mr. Alsop.

Q. Mr. Scandrett, you were president of the Chicago, Milwaukee & St. Paul in 1921, were you not?

A. No.

Q. Were you connected with that road at that time?

A. No.

Q. Did you become at any time an officer of the Chicago, Milwaukee & St. Paul?

A. No.

Q. Only after the reorganization of the road in
1440 1938, is that correct?

A. That is right.

Q. Then you became president?

A. Yes. That is my only position on the road.

Q. You are, of course, very familiar with the lease of the Terre Haute properties to the Chicago, Milwaukee & St. Paul. Can you tell the Court whether or not that lease was adopted undisturbed in the reorganization of 1928 of the old St. Paul?

Mr. Clay: I object, your Honor.

The Court: Doesn't the record show that?

Mr. Alsop: I do not know whether it does or not. I think it does.

Mr. Clay: I object on the ground that any testimony relating to the lease on the value of the Terre Haute bonds is out of place in this hearing. This is a hearing on a plan that affects only certain securities of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the debtor herein. The Terre Haute is not a debtor. The plan does not purport to bind in any way the securities of the Terre Haute and I object to any testimony relating to the questions which enter into the determination of value of the

Terre Haute securities. There will be an opportu-
1441 nity, both for the Commission and the Court, for the

Terre Haute to have their day in Court should the need ever arise. The Commission's plan contemplates an offer being made to the Terre Haute security holders. If

that offer is not accepted, and at the present time it is beyond the power of any of us to say whether or not it will be accepted by the requisite percentage of bondholders, only then does the question of the value of the Terre Haute securities become pertinent. In that case the plan provides for a disaffirmance of the lease. The disaffirmance, of course, would be upon order of Court made at a hearing on notice to the parties. I object to the introduction of any such testimony on the ground it is immaterial to the present phase of the proceedings. It is premature and the value of the Terre Haute property or of any of the securities of the Terre Haute is not in issue at this time.

Mr. Alsop: Your Honor, I would like to reply to that.

We are here pursuant to an order made by Judge Wilkerson, who brought in those whom he believed might be a party in interest in any way in this matter. We filed our objections and we have intervened pursuant to the order of the Court. We believe that the Terre Haute bond-
1442 holders are confronted at this time with the danger of being forced to choose. We think that there is pressure put upon the Terre Haute bondholders by the Commission in this plan. Now, we are here to oppose the confirmation of the plan by this Court and one of the bases upon which we take opposition is that, entirely apart from legal questions, we must show the Court that this plan is entirely unfair to the Terre Haute bondholders and this Court will not want to put up to a lot of ignorant and uninformed bondholders a choice of whether they should take this plan or go through and suffer a rejection of it.

Mr. Ernest S. Ballard: May I say, your Honor, that it seems clear we are entitled to offer evidence and be heard here on our objections to the plan. We have filed objections and Mr. Alsop's Committee has filed objections and other Terre Haute interests have filed objections. As I understand it, the purpose of this testimony is to lay the foundation for the further presentation of our evidence in support of our objections. Of course, the evidence will have to be pertinent to portions of the plan. It will have to be addressed to the facts and show that the plan is un-
lawful in certain respects and should be disapproved
1443 by the Court. I suggest that whatever ruling is made on this objection it should at least leave open that question so that we can be heard on our objections.

In the case of the income bonds of the Terre Haute, I will say that we are creditors of the Debtor inasmuch as

those bonds are guaranteed by the Debtor and the plan disapproves of that guaranty.

Mr. Thos. FitzGibbon: Your Honor, we are interested in the pledge under the refunding mortgage and the second lien of the fifty-year fives on that property. If this evidence is not submitted by the Terre Haute it then probably becomes evidence in regard to the refunding lien mortgage and maybe the fifty-year fives, so by not ruling it out here I think you are taking the ball away from the parties in interest.

The Court: How much testimony do you want to get from Mr. Scandrett?

Mr. Alsop: About ten minutes.

The Court: Now, let me see if I understand this. It has to do with the lease made by the Terre Haute line to the predecessor of the present debtor. It is a profitable lease. Everybody admits that.

(At this point there were voices of "No," "No.")

1444 Mr. Alsop: I am afraid there will be some disagreement with that statement.

Mr. Ballard: That lease is highly profitable.

Mr. Alsop: We will show from the Commission's report that it is profitable.

The Court: That is what I thought. Doesn't the Interstate Commerce Commission say it is a profitable lease?

Mr. John B. Marsh: It shows it is profitable today but not in 999 years.

The Court: That is all right. You can have your "No," if you come up and address the Court in the proper way but don't sit back and holler out "No," every time a suggestion is made. It is the statement of the Interstate Commerce Commission that up to a certain time this has been a profitable lease. You do not say "No," to that, do you?

Mr. Marsh: No, sir, I do not.

The Court: Well, you just take your seat.

Mr. Marsh: I was afraid that if I did not say something the statement might go as being acceptable to all of us. I apologize, your Honor.

The Court: Well, you know that is not the proper way to conduct yourself. You just conduct yourself here as you would in the jurisdiction from which you came and 1445 we will perhaps get along all right.

Now, until the present time this has been looked upon as being a profitable lease. Now, along comes this

plan. They want the owners of the bonds upon this Terre Haute line to accept a reduced return on their investment and at the same time they want to keep the lease and that is where the dispute comes in. You say this is a matter of profit to this company and you do not know of any reason why you should give up that profit as far as your bondholders are concerned.

Mr. Alsop: Yes.

The Court: I think you are interested in this proposition. The objection is overruled.

Mr. Alsop: Q. Mr. Scandrett, you remember this lease was taken over practically as it is by the debtor in the 1928 reorganization?

A. That is correct. That is my understanding. It went through the old receivership without disaffirmance.

Mr. Alsop: The lease to which I am referring was marked in evidence at the hearings before the Interstate Commerce Commission as Exhibit 63. That is the lease between the Chicago, Terre Haute & Southeastern Railway Company and the Chicago, Milwaukee & St. Paul Railroad Company, which was the predecessor of the present 1446 Debtor.

Q. That lease has never been disaffirmed, Mr. Scandrett, by you and your co-trustees, has it?

A. It has not.

Q. The Court has continued the time in which your might affirm or reject, is that right?

A. All leases and executory contracts.

Q. So this lease at the present moment stands unrejected or unadopted?

A. That is correct.

Q. The mileage covered by that lease is the mileage of the Chicago, Terre Haute & Southeastern Railway, a total of about how many miles, Mr. Scandrett?

A. I think it is about 370 miles.

Q. And that is made up, is it not, by a combination of three roads, the Redford Belt—

The Court: The Southern Indiana.

Mr. Alsop: Q. And the Chicago, Terre Haute & Southeastern, formerly the Illinois. Is that right?

A. I think so, but I am not sure as to that.

Q. The reason I am going into this is because I think the Court should hear from you what your views are as to whether the lease here is a profitable or advantageous one

for the Debtor and I wish the Court to also hear your
1447 views as to whether or not it is a profitable or advantageous arrangement for the Terre Haute itself. You and I have not discussed this before, have we?

A. No, we have not.

Q. Well, I would be grateful if you would tell the Court what your views on the subject are.

A. Well, of course the result of operations of the Terre Haute has been introduced before the Commission in exhibit form for a number of different years.

Q. I might say there, if you will permit me to interrupt, that I have arranged with your chief accounting officer, Mr. Severs, to introduce statements on that later so those will be before the Court, bringing the earnings down to the present time.

A. Well, it has been a profitable lease for the Milwaukee Railroad up to date.

Q. Will you be good enough to tell the Court somewhat in detail the reasons for your conviction of that fact? You say it has been a profitable lease to the Milwaukee.

The Court: Well, the record shows that.

The Witness: That is based on the results that have been shown.

The Court: The records show how much the Mil-
1448 waukee Railroad makes out of this lease.

Mr. Alsop: Yes, but I thought your Honor would like to know the various ways in which that advantage has been worked out from the point of view of the operation. May I ask this question:

Q. Isn't it a fact that by having this lease on the Terre Haute, the Milwaukee has been enabled to get its coal which it buys in the Clinton field and in the Linton field, and transport it to Chicago without having to pay any freight?

A. That is correct.

Q. In substance, that is about what it amounts to?

A. That is correct.

Q. So the Milwaukee, because of this lease, has been able to have its coal at the Chicago and northern points without having to pay any freight for the haulage between those southern points and the north?

The Court: You do not mean exactly that, do you?

Mr. Alsop: Yes.

The Court: There must be the cost of transportation.

Mr. Alsop: No, because they do not pay it.

The Court: Well, who pays the engineer that has to run the engine?

Mr. Alsop: The Terre Haute's earnings from other 1449 business. Is that correct?

The Witness: Well, I do not know that that is correct.

The Court: Well, it would be silly to say that you bring the coal up here without it costing something to somebody. Ask another question.

Mr. Alsop: Well, your Honor, I beg to differ with you.

The Court: You say you can haul a ton of coal without somebody paying for it?

Mr. Alsop: Well, the cost has to be paid, but the question is, who pays it.

The Court: Well, that is all reflected in their books.

The Witness: I think that shows in the exhibits and those are much more accurate than any testimony I can give you.

Mr. Alsop: Q. Well, may I ask you this question: The Milwaukee does not actually pay in dollars or credits the tariff rates on the haul by the Terre Haute of Milwaukee material to Chicago, does it?

A. It is all handled as company material by the Milwaukee.

The Court: That is typical of all railroads, isn't it? If you haul anything by your railroad you are not paying 1450 tariffs, are you?

The Witness: We keep separate accounts of the Terre Haute but it is operated as one division of the Milwaukee Railroad.

Mr. Alsop: Q. But, the Terre Haute is a distinct corporation from the Milwaukee, isn't it?

A. Yes, but from an operating standpoint it is an operating division of the Milwaukee Railroad.

Q. Well, recognizing the fact that the corporations are distinct, still it is true, isn't it, that the Milwaukee does not actually pay in dollars or credits anything for the haul of the Milwaukee coal?

A. It does not pay anything more for the coal hauled on the Terre Haute than for the coal at Roundup, Montana, which is on another operating division of the Milwaukee Railroad.

Q. Well, I do not want to be contentious with you, Mr. Scandrett, but the Terre Haute, as a matter of law, is not just another operating division, is it?

A. No, I am talking about how we treat it as an operating unit.

Q. You treat it as though it were an operating unit?

A. Yes.

Q. And consequently there is no cash paid to that
1451 division for the haul?

A. No.

Q. Furthermore, is there anything paid to the Terre Haute to cover the cost of the service, to cover the actual cost as distinguished from tariff rates on the haul of the coal over the Terre Haute to Chicago and points north?

A. Well, if you separate the two, the Terre Haute does not pay any of this cost at all. They are all paid by the Milwaukee.

The Court: The Milwaukee Road operates the railroad.

The Witness: Yes.

Mr. Alsop: Q. And therefore, in a smooth mouthful, so to speak, we can say that the Milwaukee gets all the earnings of the Terre Haute at the same time.

A. It gets all the earnings and pays all the expenses.

Q. Yes.

The Court: Is there anything further?

Mr. Alsop: I think that is all.

The Court: Do any of you gentlemen want to ask Mr. Scandrett any questions?

Mr. Frederick J. Moses: I would like to ask a few questions, your Honor. I represent the Princeton Uni-
1452 versity group.

Cross-Examination by Mr. Moses.

Q. Mr. Scandrett, I call your attention to the report for 1939 on page 10, the statement about the purchase by the Trustees of seven Diesel electric switching locomotives which were in operation during a part of the year 1939, at a cost of $481,000 and odd. That is about $70,000 apiece, isn't it, roughly?

A. That would be on the average. I think some of them was six hundred and some thousand dollars, so the prices were different.

Q. Yes. Now, those were purchased on the installment basis payable over eight years, monthly payments?

A. That is correct.

Q. Amounting to $5,600, or so, a month.

A. Yes.

Q. It is stated there it was estimated that the savings from the operations of those Diesel switch engines over the cost of doing the same work with coal burning steam locomotives would exceed or equal the monthly payment, and that experience of operation, the actual savings recorded, indicate that they will exceed what you estimated.

Can you give us any idea of how much more has been
1453 saved?

A. No. We have, of course, figures on that. I haven't those figures in my mind, Mr. Moses. I do not think they are substantially different from our estimate. Maybe they are somewhat better.

Q. But, the estimate has been fully realized and the seven locomotives are saving the company something like $8,000 or $9,000 or $10,000 a year each by operating them instead of steam switching locomotives, coal burnign locomotives. Isn't that true?

A. We figure to pay for them within eight years out of savings.

Q. They save over $60,000 a year.

A. Well, I do not know how that figures up.

Q. Well, eight into 481.

The Court: He says he figures the savings will pay for the locomotives over a period of eight years. Is that right, Mr. Scandrett?

The Witness: That is correct.

Mr. Moses: Q. After having bought and operated those seven switching locomotives, how many more have you bought or ordered during the year 1940?

1454 A. Well, the next order, my recollection is, was for sixteen.

Q. Yes.

A. And we are now arranging to purchase eighteen additional. That will make—

Q. Thirty-four more.

A. —forty-one.

Q. And those that you have ordered were purchased and those that you are about to order are to be purchased on similar terms to the seven that you got last year?

A. Yes, I think all of them are purchased on eight year contracts.

Q. Yes.

A. I am glad to say the more recent financing has been on a little more favorable basis.

Q. You mean as to interest?

A. Yes.

Q. Last year it was three per cent. What is it this year?

A. The present ones are two and one-half and this year is two and one-quarter.

Q. And if the result of operation of these additional thirty-four Diesel switch engines result in a saving parallel to what you have already experienced with the seven, you would have a saving of somewhere in the neighbor-

1455 hood of $400,000 a year by using them instead of coal burning steam locomotives, wouldn't you?

A. I don't know exactly how that saving works out, Mr. Moses.

Q. Well, in round numbers?

A. I don't know. We can get you the information easily, but I do not carry it in my mind.

Q. Of course, before you went into this Diesel operation you inquired as to the experience of others in using them, did you not?

A. We investigated all angles of it.

Q. Yes.

A. So far as they were open to us.

Q. And it is a matter of common knowledge that a great many of these Diesel switch engines have been put in service in the last three or four years on the railroads throughout the country, isn't that so?

A. That is correct.

Mr. Alsop: Your Honor, excuse me. I object to the leading of the witness. I think this is a very important question and I think those facts should be brought out from the witness, with all respect to Mr. Moses. He is really giving you—

The Court: What are you interested in, coal?

Mr. Alsop: Yes, very definitely, your Honor.

1456 The Court: I think I understand what he is trying to do. We in this state ought to be interested in coal, too.

Mr. Moses: Q. Now, this general use of Diesel locomotives has shown up in the last five years, has it not?

A. Well, I think there were Diesel switches before that, but in nothing like the present volume.

Q. Well, before 1938—see if I can refresh your recollection—there were in the United States only nine Diesel switch locomotives, were there not?

A. I don't know.

Q. Isn't it your recollection that they were new and very few of them in use experimentally at that time?

A. That is my recollection, yes.

Q. And that use has grown so that now there are several hundreds of them in use on railroads in the United States?

A. I would say there were that number, that many.

Q. And the Diesel is also being widely used in passenger locomotives, is it not?

A. A good many Diesel operated passenger trains in operation now.

Q. And these Diesel locomotives will run for a thousand or more miles without changing locomotives and come
1457 back next day, isn't that so?

A. Yes, I think that is true.

Q. And that is common railroad practice on long hauls?

A. I don't know how common it is, but I think there are Diesels that are doing that.

Q. Well, you know the Atlantic Coast Line and the Seaboard Airline run these Diesel trains back and forth to Florida every day, fourteen or fifteen hundred miles?

A. I am not familiar with their operation. I know the Burlington and the Northwestern and Union Pacific do that between here and Denver, over a thousand miles. Of course we operate some steam locomotives almost that distance on passenger trains.

Q. Yes, but the use of the Diesels is growing on the railroads throughout the United States, isn't that so?

A. Well, before 1933 or 1934 there weren't any on passenger trains.

Q. Yes.

A. And now there are a very considerable number.

Q. They burn oil, do they not?

A. They burn—

Q. Their fuel is oil, not coal?

A. That is right.

Q. They are internal combustion engines?

A. They burn a distillate.

1458 Q. Beg pardon?

A. They burn a distillate, or some oil.

Q. Now, has it been your experience in the use of the Diesels here that the quantity of oil required for a given number of miles of operation in these Diesel locomotives is about one-tenth as many carloads of coal that would do the same work on steam railroads?

A. I don't know how it works out quantitatively. Of course, whatever the savings are are included in our estimated savings.

Q. Yes, but the quantity of fuel used by these Diesels is very much smaller.

A. Are you talking about Diesels in passenger train operation?

Q. I am talking about Diesels that you are using in your yards.

A. I couldn't tell you just what their tank capacity is.

Q. No, but I mean a given number of locomotives, or one locomotive, will use a given quantity of oil or of coal over a given period of operation. Now, isn't it a fact that the volume of fuel used by the Diesel is much less than the volume of fuel used by the coal burning locomotives?

A. Quantitatively, yes.

1459 Q. Yes. That is what I am talking about. Now, one of your costs in operating your coal burning locomotives is water, is it not?

A. Well, that is a substantial item.

Q. Your annual report for 1939 shows that the Milwaukee paid about $600,000 for their water for locomotives.

A. That is the cost of the water.

Q. Yes. And about $185,000 for maintaining your water tanks, is that roughly correct?

A. Well, I don't know about those figures, but there is a substantial expense for both items.

Q. And the report will show.

A. The report is correct.

Q. These Diesels use water only as an automobile uses water, a small quantity for cooling purposes.

A. Very very much less.

Mr. Moses: That is all.

Cross-Examination by Mr. Oliver.

Mr. Oliver: My name is Fred N. Oliver. I represent the Mutual Savings Bank. I have a few questions of Mr. Scandrett.

Q. Mr. Scandrett, I believe that the trustees with your counsel have made a careful study of the plan to
1460 determine what defects there might be in the Plan which need correction, have they not?

A. On the mechanical defects.

Q. Yes.

A. A study has been made by our counsel and by our accounting officers.

Q. Yes, and you have filed objections pointing out the changes, mechanical changes in the mechanism of the Plan which are required to make the Plan workable.

A. Which would certainly be desirable from our standpoint.

Q. Do you think, in your opinion, if these changes are make the Plan is workable?

A. Well, so far as we have been able to determine, yes.

Q. Now, I have two or three questions about the Terre Haute. Is the prosperity of the Terre Haute in great part attributable to its relationship with the Milwaukee system?

A. Well, I think there can be no question it has been a most helpful relationship for the Terre Haute.

Q. Well, may I have my question answered directly, Mr. Scandrett, please? Is the prosperity of the Terre Haute at the present time in great part attributable to this relationship with the Milwaukee system?

A. I think so.

1461 Mr. Alsop: Your Honor, I object to that question. The figures show that. I think he may ask his opinion, but not the fact,—is the prosperity of the Terre Haute attributable to the St. Paul.

The Court: I think all his answer gives is his opinion.

Mr. Oliver: Q. A considerable portion of the present traffic is the company coal traffic of the Milwaukee.

A. That is a very substantial part, yes.

Q. Do you have a general idea from the standpoint of revenues?

A. There are no revenues from the company coal.

Q. I know, but you prepared certain studies—

A. On the basis of tariff rates. Now, I am just guessing—your exhibit will show definitely—I should say your company coal on the basis of tariff rates would cover half of your operating revenues.

Q. A considerable proportion of the present Milwaukee traffic is the overhead commercial traffic developed by the Milwaukee system, is it not?

A. Are you talking about coal now?

Q. I am talking about general commercial traffic other than coal.

A. Well, of course the Milwaukee was able to do for

the Terre Haute, and to a greater extent was able
1462 to do for the Terre Haute what in some respect it could not do for itself. In other words, to participate in joint rates with eastern lines through Terre Haute gateways. We have by no means a full line of rates there, because the Milwaukee extending into eastern territory was not welcomed by the eastern lines.

Q. Yes.

A. But we have built up a quite substantial interchange on both eastbound and westbound general traffic via Terre Haute gateways. Also there is a very considerable movement of coal from the West Virginia and West Kentucky coal fields that moves via Terre Haute and the Milwaukee.

Q. In the interest of the System it has been your policy, then, to route in so far as it is practicable the commercial traffic over the Terre Haute?

A. Yes, we have solicited by the Terre Haute gateways very actively.

Q. You have also succeeded in building up, have you not, a considerable overhead coal traffic from the West Virginia fields moving over the Terre Houte lines?

A. Well, I don't know that we have built up the traffic; but we have been able to get some of that traffic over the Terre Haute.

Q. Yes.

1463 A. In other words, the West Virginia coal has had a substantial market in this territory, irrespective of the Terre Haute.

Q. Yes, but what you have done, you have routed the traffic obtained by Milwaukee solicitors over the Terre Haute lines.

A. That is correct.

Q. Have you any opinion, Mr. Scandrett, whether, assuming the relationship is severed, the Milwaukee should obtain its company coal elsewhere and reroute the System traffic over other lines, whether the Terre Haute operating independent could do so prosperously?

A. Well, I think they would have a pretty difficult situation.

Q. I judge your answer is that they could not operate prosperously, in your opinion.

A. Well, I don't want to say exactly what they could do or couldn't do, but I think they would have a very difficult time.

Mr. Oliver: That is all. Thank you, Mr. Scandrett.

1464 *Cross-Examination by Mr. Clay.*

Q. I have a question. Mr. Scandrett, you stated that approximately fifty per cent of the coal hauled over the Terre Haute was company coal.

A. No, the figure I gave, and I said, Mr. Clay, that I was not sure as to whether it was accurate, I would prefer to have it taken from the exhibit,—that of the total volume of all traffic I would guess that about fifty per cent was company fuel.

Q. Exactly. Now, assuming that the Milwaukee did not take its coal from the mines on the Terre Haute, what effect would that have on the operation of those mines? Wouldn't a lot of the mines have to close up?

A. Well, we feel that our coal policy has been very helpful to the production of coal along the line of the Terre Haute, and if we ceased to purchase any coal in that territory, I would think that a number of these operations would close down.

Q. They are marginal mines?

A. Yes.

Q. Mines that have the high cost?

A. Yes.

Q. Now, isn't it true that as long as those mines keep open and the communities down there are busy, that
1465 there is also an inbound traffic to those communities which is hauled over the railroad and is reflected in the revenues of the Terre Haute?

A. Yes, I think that is true. In other words, population makes freight traffic. There is a greater population there by reason of the operation of the mines than there would be without them.

Q. That is, there is coal moving out and commodities moving in to take care of the needs of the communities.

A. That is correct.

Q. Assuming that this lease is disaffirmed or should be disaffirmed, would you care or will you state your opinion as to whether the Milwaukee would continue to take as much coal from that region as it has during the period of the lease?

A. Well, while I was not with the property—

Q. Because of a separation of ownership.

A. Well, I was not with the property prior to the Terre Haute lease. My recollection is, based on examination of records, that before that lease we took about twenty-five

per cent of our requirements for our lines from the Terre Haute.

Q. In other words, after the making of the lease—

A. We took a hundred per cent.

Q. You just about doubled the amount of the coal
1466 needed to satisfy your requirements from that region.

A. I would say we quadrupled it.

Q. Quadrupled it?

A. That would be the fact, if I am right in my recollection, that they took about twenty-five per cent, because afterwards they took substantially a hundred per cent.

Q. Oh, I understand. You took all of the coal—

A. For the territory where Illinois and Indiana coal is used. In addition to that, we used Lake Dock coal, and we also have a mining operation out in Montana which covers a certain part of our railroad.

Q. Certainly.

A. We take coal in Iowa, also.

Q. In other words, to summarize what you have already stated, the operation of the Terre Haute by the Milwaukee has been very advantageous, has it not, to the Terre Haute?

A. I think so.

Mr. Clay: That is all.

Mr. Moses: May I ask one or two more questions?

The Court: About some other matter than the one you have covered?

Mr. Moses: Yes, sir.

The Court: I don't want to keep Mr. Scandrett
1467 here all day. Go ahead.

Mr. Moses: I will be very brief.

Cross-Examination by Mr. Moses.

Q. Mr. Scandrett, the Milwaukee also operates oil burning locomotives, does it not?

A. Yes we operate—

The Court: He has gone over that.

Mr. Moses: No, I mean oil burning steam locomotives.

The Court: In addition to their Diesel?

Mr. Moses: Yes, sir.

A. (Continuing.) Yes. Almost all of our steam locomotives on our far western end, due to Government regulations as to going through the Forest Reserve, are oil-

burners, and some of our Hiawatha engines are also oil-burners.

Q. The Hiawathas are the fast passenger locomotives?

A. The what?

Q. The Hiawathas are fast passenger locomotives?

A. Yes, some of them are coal-burners and some of them are oil-burners.

Q. And you are every year converting coal-burners into oil-burners, isn't that correct?

A. Yes, and we have made conversion the other way, too.

Q. You have got something like about eighty oil-
1468 burners out of your thousand or eleven hundred locomotives, isn't that so?

I am not familiar with the number.

Q. Well, the report shows.

A. Yes.

Q. As the use of oil increases, or if it increase in substitution for coal on the locomotives on this system generally, the value of this Terre Haute lease will decrease, isn't that so?

A. Well, we would not use as much coal from that, and of course other factors might upset that particular situation.

Q. If this lease were disaffirmed, Mr. Scandrett, there is no reason why the Terre Haute could not continue to buy the coal which it uses in these Indiana mines and transport it over the Terre Haute to Chicago.

A. You say the Terre Haute purchase it?

Q. No, the Milwaukee purchase its coal in the Indiana mines and transport it to Chicago over the Terre Haute.

A. That could be done.

Q. And the Milwaukee owns ninety-seven per cent, or thereabouts, of all the stock of the Terre Haute, does it not?

A. That is correct.

Q. So that if this hauling of the Milwaukee coal
1469 over the Terre Haute be so profitable to the Terre Haute, whatever profit there might be over their bond interest would belong to the stockholders, isn't that so?

A. I suppose ultimately it would go to the equity.

Q. Yes. And it would not be impracticable, if this lease were disaffirmed, to make an operating agreement, that is, the Milwaukee and the Terre Haute, by which the Milwau-

kee would furnish the engines and the crews and the cars and what not to run this line operated for the benefit of the Terre Haute company, isn't that so?

A. I think that would be possible. Whether there would be practical difficulties in the way, I don't know.

Q. And if that were done and the Milwaukee did not have to guarantee the payment of the interest and the payment of the principal of these Terre Haute bonds, it would have that much less liability, would it not?

A. It would have that much less liability. Whether year to year it would work out more or less profitably, I don't know.

Q. But it would be taking no chance on the future of coal as the preponderating fuel for the operation of railroads.

1470 A. Well, it would not have the maturity to meet.

Mr. Moses: That is all.

Cross-Examination by Mr. FitzGibbon.

Q. Mr. Scandrett, you have testified as to the use by your road of Diesel switches oil locomotives on your line. Is there really any difference if you exclude the electric locomotives on the lines west? Is your road any different than any other road in this territory?

A. The far western territory?

Q. That is from Chicago to the coast, in its use of oil.

A. You say if you exclude electrification?

Q. Excluding electrification, yes.

A. Well, I don't know that there is in that respect.

Q. You have no present intention of converting the eleven hundred steam coal locomotives that you have into oil-burners, have you?

A. No.

Mr. FitzGibbon: That is all I have.

Mr. Moses: Your Honor, may I make a suggestion? That is, instead of counsel going up and conversing with the witness, stand back and have the witness speak to them so we can all hear what is going on.

1471 Mr. FitzGibbon: I apologize.

The Court: We will apply that to the next counsel. This is the last man that wants to question Mr. Scandrett, as I understand.

Cross-Examination by Mr. Alsop.

Q. Mr. Scandrett, you were asked a little while back as to what would be the effect upon the Terre Haute of a divorce of the two roads. In that connection, do you remember about how much the Milwaukee paid out annually for the two years before this lease went into effect for coal haul?

A: No, I haven't that figure in mind.

Q. I think you were present at a hearing before Judge Wilkerson on June 20, 1938, when the trustees applied to the Court for instructions as to whether or not the Bedford Belt Bonds should be paid. Do you remember that hearing?

A. Yes, I remember that hearing. I was here part of the time.

Q. You remember Mr. Sparrow was on the stand and your counsel, Mr. Dynes, was questioning him. Do you remember this Mr. Sparrow saying: "In the year prior to the reorganization of the Terre Haute, the Milwaukee purchased almost seventy per cent of this company
1472 coal from mines on other lines serving the Illinois and Indiana coal fields. The principal ones were the C. & E. I., Illinois Central, the Terre Haute and Pennsylvania, and in that year it paid out to these various roads through charges for the movement of this coal $2,970,000."

Does that refresh your recollection at all?

A. No, it does not, but if Mr. Sparrow stated that, why I am satisfied it is correct.

Q. Well, now, since that lease was adopted by the debtor, has it ever paid to anybody $2,000,000 for freight haul on its coal in any one year, or anything like that?

A. No, I think not.

The Court: Is that all? I guess that is all, Mr. Scandrett.

Cross-Examination by Mr. Nicodemus.

Q. Mr. Scandrett, you referred to the cost of financing the Diesels and mentioned very low figures. Did you refinance your other equipment trusts or some of them, in 1939 or 1940?

A. Well, we refinanced this year the maturities which were unpaid.

1473 Q. Will you state the interest rate on the substituted?

A. One and three-fourths per cent.

Mr. Nicodemus: One and three-fourths per cent. That is all.

The Court: We will recess until 2:00 o'clock.

(Whereupon the further hearing of this cause was adjourned until 2:00 o'clock P. M., September 4, 1940.)

1474 In the Matter of
Chicago, Milwaukee, St. Paul and Pacific Railroad Company,
Debtor.

September 4, 1940.
2:00 o'clock P. M.

Court convened pursuant to recess.

Present: Same parties as before.

Additional Appearances:

Mr. Harry Hoffman, of New York, and
Mr. Theodore E. Rein, of
Sabath, Perlman, Goodman & Rein, of Chicago, representing the Anglo-Continentale Treuhand, Consolidated Mortgage Bonds and First Mortgage Bonds of Milwaukee & Northern.

Messrs. Davis, Polk, Wardwell, Gardiner & Reed, and
Messrs. Tenny, Harding Sherman & Rogers, by
Mr. Thomas O'G. FitsGibbon and
Mr. Henry F. Tenney, representing the Guaranty Trust Company of New York and Merrel P. Callaway, as Trustees of the Debtor's Fifty-year Five Per Cent Mortgage.

Mr. Ernest S. Ballard and Mr. Minier Sargent, representing Massachusetts Mutual Life Insurance Company and Prudential Insurance Company of America.

1475 Mr. Whitlcok: If the Court please, Mr. Scandrett, whose testimony was just concluded, has asked me for permission to make a very slight correction in his testimony, to this extent: In answer to a question by counsel, I think Mr. Moses, he stated that the rate of interest upon the proposed purchase of Diesel was two and a quarter per

cent. He tells me that that was in error, that that should have been two per cent.

I would like to make the correction to that extent, is that correct, Mr. Scandrett?

Mr. Scandrett: Yes.

The Court: Is that satisfactory, Mr. Moses?

Mr. Moses: The less the better.

The Court: All right. What is the next move here, Brother Nicodemus?

Mr. Nicodemus: Mr. Severs, will you take the stand.

1476 J. W. SEVERS, called as a witness on behalf of the Debtor, having been first duly sworn, testified as follows:

Direct Examination by Mr. Nicodemus.

Q. Mr. Severs, will you state your full name, your occupation and your previous service record for the Debtor?

A. J. W. Severs: 5761 North Richmond Street, Chicago. At the present time I occupy the position of Assistant to the Trustees. I have been employed by the Milwaukee Road for about twenty-three years, starting in the Accounting Department as a clerk, traveling auditor, assistant auditor of expenditure, assistant comptroller up to the present position.

Q. Have you at the request of the Debtor's counsel prepared certain exhibits, four in number I believe, for introduction in these proceedings?

A. Yes, sir.

Q. Will you first describe the four exhibits briefly and then take each one up in their order and explain them in your own way?

1477 A. I have here a "Statement of Operating Revenues and Income Available for Fixed Charges" for each of the years 1926 to 1940, inclusive, the last half of 1940 being estimated.

In addition to that, at your request the year 1935 has been divided into two equal periods; that is, the first and second halves of the year.

The first column—perhaps I had better not explain this statement until after I have introduced the others.

Q. I thought you might explain the other three so that counsel would know what to expect.

A. I have here a "Statement of Income Available for Interest on Mortgage Bonds for the Five-and-one-half-year Period July 1, 1935, to December 31, 1940," with the last half estimated.

The next exhibit is "Statement as of August 15, 1940, of Equipment Obligations that Will Be Undisturbed in Reorganization and Assumed by the Reorganized Company," in accordance with the Interstate Commerce Commission's plan of reorganization.

The next statement is entitled "Capitalization of Debtor as of July 1, 1935 (Including Accrued Interest to June
1478 30, 1935, as Indicated.)"

Mr. Nicodemus: Now, may those four exhibits be numbered 5, 6, 7 and 8 for identification? And I will later offer them in evidence, so that he may refer to them by their reserved numbers?

The Court: Why not introduce them now and save that time.

Mr. Nicodemus: I will offer them in evidence subject to the testimony of the witness, explanatory of each exhibit.

Mr. Clay: I beg your pardon but you described five exhibits and there are only four here.

The Court: They may be admitted.

(The said documents so received in evidence by the Court were marked DEBTOR'S EXHIBITS 5, 6, 7 AND 8, and are in words and figures as follows, to-wit:)

1479 Mr. Nicodemus: No, there are only four.

Q. What is your Exhibit No. 5?

A. Exhibit No. 5 was stated as a tabulation of total operating revenues and the income available for fixed charges for each of the years 1926 to 1940, inclusive, the last half of the year 1940 being estimated.

The column styled "Operating Revenues" shows for those years the total operating revenues of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and its predecessor, and the operation of the trustees.

Mr. Nicodemus: A little louder, Mr. Severs.

The Witness: Louder?

Mr. Nicodemus: Yes.

A. The second column "Income Available for Fixed Charges" represents the income defined by the Interstate Commerce Commission as available for fixed charges ad-

justed by deducting an item representing expenses included in our income accounts below income available for fixed charges representing expenses of the Terre Haute Corporation which was assumed by the Milwaukee. It
1480 also excludes income on Terre Haute bonds owned by the Debtor corporation, and a small item of rent for leased road.

The next column shows "Per Cent of Income Available for Fixed Charges is of Operating Revenues."

Q. The rent for leased roads other than the C. T. H. & S. E. is deducted but the Terre Haute rent is not; is that correct?

A. That is correct.

Q. Will you explain the reason why that is not deducted?

A. Well, the reason it is not deducted is upon your request that it be included so that there would be developed an amount that would be available for interest, assuming that the Terre Haute bonds were part of the reorganized structure of the Debtor corporation when reorganized.

Q. That is, the rent would be used to pay the rent on the Terre Haute bonds and in order to give a true picture of how much cash would be available for fixed interest including the Terre Haute bonds you have deducted the rent?

A. I have not deducted the rent.

Q. Have not deducted the rent?

1481 A. That is right.

Q. Is that the same adjustment that was made by the insurance group in their restatement of the income account in previous years?

A. Not exactly, no.

Q. Not exactly?

A. Not exactly, because the Institutional Investors deducted certain other,—or made certain other adjustments for depreciation and retirements of equipment and other things that are non-recurring.

Q. So that the amount that is available under this exhibit is slightly more than is shown by their exhibit or slightly less for the corresponding years?

A. Well, I don't really know.

Q. If you can't answer that offhand, it doesn't matter.

A. I really don't know.

Q. The record will show.

A. Because I have made no such comparison.

Q. Will you pass to the next one?

A. Exhibit No. 6 is a tabulation for the five and one-half-year period beginning July 1, 1935, and ending De-
1482 cember 31, 1940. Again, the showing for the year 1940, the last half, has been estimated.

The first line shows income available for fixed charges for each year and for the half of the period beginning July 1, 1935, and ending December 31, 1935.

From that has been deducted interest other than mortgage bond interest and rents which have been authorized by the Court for payment.

That leaves a showing of income available for interest on mortgage bonds which for that period, that five and a half year period was $37,962,000.

From that is deducted mortgage bond interest paid. That is, interest that matured in the period and was authorized by the Court for payment. That amounted to $8,843,442.

The next showing is "Remainder of Income Available for Interest on Mortgage Bonds," which for the period is $29,118,558.

The next showing is "Capital Expenditures and Payments in Reduction of Funded Debt," which amounted to $56,489,672.

1483 Against this is applied credits, that is, depreciation charges in operating expenses, road retirement charges in operating expenses and salvage from property retired, so that the net of capital expenditures and payments in reduction of funded debt was $13,060,132.

The next showing is "Remainder of Income Available for Interest on Mortgage Bonds After Deduction of Bond Interest Paid and Net of Capital Expenditures and Payments in Reduction of Funded Debt," which amounts to $16,-058,426.

From that figure is deducted dividends and interest which have been included in income above from securities pledged with trustee of the First and Refunding Mortgage and withheld from Railroad Trustees. That amounts to $1,670,999.

The next item is the "Remainder of Income Available for Interest on Mortgage Bonds After Deduction of Bond Interest Paid, Net Capital Expenditures, Payments in Reduction of Funded Debt and Interest on Pledged Securities Withheld from Railroad Trustees," that is, after the above explained deductions, which amounts to $14,387,427.

1484 Q. You haven't that last figure all in cash now, have you?

A. No, sir. I can tell you where it went, though, most of it.

Q. Most of it is in current assets, material and supplies?

A. There was an increase in cash of $9,542,000 over the beginning of that period. There was an increase in stock and material of $3,116,833; and we reduced our tax liability about $1,700,000, which makes up the $14,387,000.

Q. Then the net expenditures for additions and betterments for the five-year period is $13,060,133?

A. No. I wouldn't say that.

Q. "G"? Line "G"?

A. The net of capital expenditures and payments in reduction of funded debt were $13,060,132.

Mr. Nicodemus: That is correct.

A. The next statement, Exhibit No. 7, shows as of August 15, 1940, the equipment obligations that would be undisturbed in the reorganization and assumed by the reorganized company under the Interstate Commerce Commission Plan of Reorganization.

1485 This statement includes obligations for eighteen Diesel switching locomotives which the Court has authorized the acquisition of but which we have not yet acquired but for which we have made commitments. The contracts are not yet signed but the terms are fixed.

I believe the statement in other ways is self-explanatory.

Q. At this time may I interrupt you to ask you if you will explain a little more in detail than Mr. Scandrett did the refinancing of maturities of equipment trust obligations during the last year? He only gave the net cost of the financing.

A. Well, beginning with the Debtor's plan of reorganization, shortly after the Debtor went into bankruptcy we started to pay equipment maturities twenty per cent on the date of maturity and extending the balance 1, 2, 3 and 4 —four years. That is, the maturity for five years would be extended,—would be paid twenty per cent on maturity and the balance extended for four years. So that as of June 30th this year there was $5,287,000 of matured equipment trust certificates outstanding bearing rates of interest

1486 from five and a half to four and a half per cent, varying rates. We arranged to refinance these matured equipment trust certificates under an indenture whereby the trustees, the railroad trustees sold $5,000,000 of their certificates of indebtedness bearing 1¾ per cent interest.

That money plus $60,000,000,—$67,000,000 which the trustees, the railroad trustees deposited with the indenture trustee, was used to purchase matured equipment trust certificates which are pledged as collateral security for the trustee's evidence of indebtedness.

That refinancing resulted in a saving of approximately $300,000 over the period of the trustee's certificates of indebtedness, which is about four years.

Q. Well, that was very favorable refinancing, was it not? You would regard that as a very good trade?

A. Well, to the extent of $300,000; I think that is fair enough.

Q. And you would expect to do very well with those that come due in the reasonably near future; wouldn't you?

A. Will you please repeat the question?

1487 Q. I say, you could refinance any of the existing certificates that came due in the future on a favorable basis?

The Court: Could you make the same kind of a deal?

Mr. Nicodemus: Could you make the same kind of a deal?

A. No, because there is none of them callable. There are none of the certificates outstanding now that are callable. We have just made arrangement with the Reconstruction Finance Corporation on two other trusts to delete the call feature in the trust, and as a result issued definitive certificates bearing two and a half per cent interest in lieu of the four per cent which the certificates bear.

Q. So that the future tendency is for the lower rates on equipment trusts, set up in this plan?

A. Well, that is the fact at the present time. I don't know how long it will last.

The next exhibit, No. 8, is a statement which I have prepared at the request of Mr. Nicodemus. The form is his. And it shows the capitalization of the Debtor as of July 1st, 1930—wait a minute. Interest—that is right. It 1488 shows the capitalization of the Debtor as of July 1, 1935, including interest accrued to June 30th, 1935, as indicated.

There is an exception which has been explained by notes, in that equipment obligations and RFC loans are projected forward to December 31, 1940.

Now, in the case of the Terre Haute bonds and the Milwaukee & Northern bonds, there has been shown no in-

terest accrued unpaid. While there was some interest accrued on Terre Haute and Milwaukee & Northern bonds, that had not been paid as of June 30th, there is nothing shown there for the reason that it is the intention as I understood from the request of Mr. Nicodemus, in some other exhibit that he proposes to present here, that would fund any of the interest that might have been unpaid as of June 30th, 1935.

Q. Well, the interest on all of those Milwaukee & Northern's was picked up later, was it not?

A. Yes, sir, yes, sir. I just wanted to explain, Mr. Nicodemus, as to why it is different with respect to those bonds as compared with others.

On the General Mortgage Bonds, the accrued interest to June 30th is that which accrued between January 1, 1489 and June 30th, 1935, and it does not include any interest that had matured and had not been paid by reason of the holders not presenting the coupons. That explanation is also true in respect to the fifty-year, the convertibles and the Gary.

Mr. Nicodemus: That is all with this witness.

The Court: Any more questions any one wants to put to this witness?

Mr. Alsop: Your Honor, I have some.

The Court: Will you give your name?

Mr. Alsop: A-l-s-o-p, Alsop.

This question is in the nature of going ahead with my own case, your Honor. Mr. Severs would be almost the most important witness that I would call. If you would like me to go ahead with him now I would be glad to do that, unless that interferes with Mr. Nicodemus' plan and yours.

Mr. Nicodemus: No, sir. That is very agreeable to me.

Mr. Oliver: I understand that counsel expects to offer exhibits through this witness dealing with an entirely separate matter. That is, the Terre Haute.

We have no real objection except it seems to us 1490 in the interest of orderly procedure that the Debtor ought to present its case and then Mr. Alsop present his other case dealing with the Terre Haute, so that we can keep the record in some semblance of order.

The Court: Why isn't there some merit to Mr. Oliver's suggestion? This witness will be available for you.

Mr. Alsop: It is entirely agreeable to me, your Honor, if you would prefer it that way.

The Court: Then let us proceed that way.

No further questions of Mr. Severs?

Mr. Smith: Yes. I have some..

Cross-Examination by Mr. Smith.

Q. Mr. Severs, in the Commission's plan, in its supplemental report, it refers to the earnings of the Milwaukee during the year 1939 and during the first two months of 1940. I will ask you if you currently file with the Commission your earning reports..

A. We do, Mr. Smith. We furnish—

Q. Is that quarterly?

A. —to the Interstate Commerce Commission
1491 monthly, on the 25th of the month, which is due in Washington on the 26th, what is known as an income statement in the short form, down to net railway operating income.

On the 15th—we are required by the 15th of the following month to furnish a report which is known as income and balance sheet accounts, which include a condensed income statement down to net income, which, of course, is a complete income statement except for the detail.

Mr. Smith: That is all.

The Court: All right.

Redirect Examination by Mr. Nicodemus.

Q. You don't file it in this proceeding, however?

A. We also file it with the Court.

Q. I mean in this proceeding here.

A. On the 15th of the second following month we file it with the Court in this proceeding.

Q. You send it down to the Secretary of the Commission and you don't know what happens to it when it gets there, do you?

The Court: He says he files it with the Court as well as with the Commission.

1492 The Witness: That is right.

The Court: Is that your answer?

A. That is right.

The Court: Did you understand that answer?

Mr. Nicodemus: I understood that answer. I don't think that the Commission has considered those.

Mr. Smith: They are referred to specifically in their supplemental report.

Mr. Nicodemus: They referred to having them brought up to date?

Mr. Smith: Yes, sure.

The Court: I don't quite get you, Mr. Nicodemus. You want the inference given out here that while he may send them down according to the law and it goes to the Secretary's office, that perhaps somebody throws it in some waste basket or something and nobody ever sees it?

Mr. Nicodemus: No. I mean they don't—

The Court: Well, what do you suppose they do with it down there?

Mr. Nicodemus: For their general files. They are doing a lot of things besides reorganizing railroads.

Mr. Smith: If the Court please, there is a general order in bankruptcy under which these are filed with the
1493 Commission and in this proceeding; and on page 6960 of the printed record before the Court and on page 7050 of the printed record the Commission refers respectively to the earnings of the property for 1939 and to the earnings of the property for the first two months of 1940.

The Court: Isn't this true, Mr. Smith, that even though this company is in bankruptcy the Interstate Commerce Commission has not relinquished any of its jurisdiction over it as an operating railroad?

Mr. Smth: That is correct.

The Court: And they are handling this as a going concern in so far as they are interested in the matter?

Mr. Smith: Yes, sir.

The Court: So I don't quite get the reason that question was put by Mr. Nicodemus.

Now, your name is Hoffman and you want to ask a question?

Mr. Hoffman: Yes.

The Court: All right.

1494 *Cross-Examination by Mr. Hoffman.*

Q. Referring to Exhibit No. 6 for identification, in subdivision "C", you enter mortgage bond interest by amounts paid which matured in period and were authorized by Court

for payment. How much in dollars of interest accrued during the period in question which was not authorized by the Court for payment?

A. Just one minute. I am sorry, Mr. Hoffman, but I haven't a record here with me that would bring that right up to the minute, but I will be glad to supply it.

Q. Will you supply those figures, please?

A. Yes.

Q. What significance, if any, do you attach to the last figure in the last column of Exhibit No. 6 for identification, $14,387,427? What is the meaning of that figure?

A. The meaning of it is as stated. That is the remainder of income available for fixed charges after deductions as shown on the statement.

Q. Without having been actually reserved for fixed charges unpaid—

A. There is no reservation.

1495 Q. —and accruing during the period?

A. There is no reservation whatever.

Q. What is the significance of adding and subtracting capital expenditures and payments in reduction of funded debt to the remainder of income available for interest on mortgage bonds in subdivision "D"?

A. Will you read the question, please?

(Question read.)

A. The significance is to display what the trustees did with the money available for—income available for fixed charges.

Q. And no other purpose?

A. And no other purpose.

Q. You will supply the figure in question?

A. Very glad to.

Mr. Hoffman: All right. These have not been admitted in evidence. Am I correct?

The Court: They have been. Those by Mr. Nicodemus? Yes; they are in.

Mr. Hoffman: Oh, I thought only for identification.

The Court: What is the use of taking the time? You will have to put them in later on.

Mr. Hoffman: If your Honor please, I object—I
1496 thought they were offered for identification only. I object to the admission of Exhibit No. 6 as being incomplete, a hybrid exhibit. It does not mean anything. Capital expenditures are lumped with income items. In-

terest that has not been paid is ignored entirely in arriving at some fictitious figure; and if this exhibit is to be received as being of any probative weight I certainly must object to it. I respectfully submit that an exhibit of this type has no part in a proceeding of this kind.

The Court: The record may show your objection but the exhibit is still in.

Mr. Hoffman: In order to make it in proper form, may I ask your Honor to reconsider his ruling? I move that the exhibit be stricken, sir.

The Court: Your motion is overruled.

Mr. Hoffman: Exception, sir.

The Court: Have you any more questions of this witness? Mr. Moses?

Mr. Moses: Yes.

1497 *Cross-Examination by Mr. Moses.*

Q. On Exhibit 6, Mr. Severs, under the letter "E" you have a total of additions and betterments of twenty-nine million odd and initial payment on new equipment of six millions odd, making about $37,000,000. That is correct, isn't it?

A. That is correct.

Q. Now, under "F" you have credits against "E" of thirty millions for depreciation, thirty millions 9, practically thirty-one millions, seven millions and a half of road retirements and four millions 8 from salvage on property retired, making a total of forty-three millions odd. So the money charged against operating expenses for depreciation—the road retirements charged against operating expenses and the salvage on property retired amounted to something like $6,000,000 more than the capital expenditures you made for additions and betterments and initial payments on new equipment; isn't that so?

A. That is right.

Mr. Moses: All right, thank you.

The Court: Any further questions. I guess that is all.

1498 Mr. Nicodemus: May we call Mr. A. E. Lodge?

The Court: Mr. A. E. Lodge.

A. E. LODGE, called as a witness on behalf of the Debtor, being first duly sworn, testified as follows:

Direct Examination by Mr. Nicodemus.

Q. Will you state your full name, Mr. Lodge?

A. A. E. Lodge.

Q. What is your profession and your present occupation?

A. I am an engineer and an accountant. My present occupation is valuation engineer and auditor of investment and joint facility accounts for the trustees of the Chicago, Milwaukee,—of the property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Q. As valuation engineer are you in charge of the valuation department of the Milwaukee road?

A. Yes.

Q. How long have you been at the head of the valuation department of the Milwaukee road?

1499 A. Since March 1st, 1920, about twenty and a half years.

Q. What experience had you had in railroad valuation prior to March 1, 1920?

A. I was connected with the valuation department of the Chicago, Burlington & Quincy from November, 1911, until August, 1918, with the exception of one period of about two years when I was engaged on other engineering work for that company.

Q. Have you prepared an exhibit entitled "Cost of Reproduction of All Property Except Land Plus Value of Land as of June 30, 1935?"

A. I have.

Q. For the Milwaukee road and for the Terre Haute road?

A. Yes.

Q. Will you explain the exhibit?

Mr. Nicodemus: And I will not offer it because I see that the other counsel may interpose an objection but I want the record to describe the document.

Mr. Oliver: We would like to see the document if we may, please.

The Court: What is the documen

Mr. Nicodemus: Well, it is a valuation study.

1500 It may be distributed. There is nothing esoteric about it.

The Court: It is the valuation study this witness made of the property of the Debtor corporation?

Mr. Nicodemus: Yes.

Mr. Oliver: If your Honor please, we have not yet seen the document but I anticipate that what counsel proposes to do is to introduce in this record at this time what amounts to in fact a duplication of what is already contained in the present record.

The present record contains voluminous valuation studies made not only by the Debtor but by the Interstate Commerce Commission; and I should like to know in what respects this valuation study differs from the others.

Mr. Nicodemus: This supplements the existing record in particulars that will be developed.

The Court: Is it something different from what was introduced before the Commission?

Mr. Nicodemus: It is, your Honor.

Mr. Oliver: We have not seen it, of course, your Honor.

Mr. Nicodemus: Have you copies of it?

The Witness: Yes.

1501 Mr. Nicodemus: It is being circulated here.

Mr. Oliver: Oh, yes.

Mr. Nicodemus: So that you will all get copies of it.

Mr. Oliver: If your Honor please, perhaps I might be mistaken but by a casual inspection of the exhibit itself it indicates that counsel has given what seems to be reproduction estimates as of June 30th, 1935. That matter was all gone into; those figures were before the Commission. I understood counsel to state that this was supplemental to material already in the record.

Mr. Nicodemus: It does supplement the record, and the Commission figure is quite different from the figure that is reached here. I want to have him explain it.

Mr. Oliver: The only difference is that counsel omits to deduct anything for depreciation. He sets up cost of reproduction new and the value of the land and deducts nothing for depreciation. That seems to be the difference.

Mr. Nicodemus: That fact is precisely the fact I want to get in the record, if you will allow me to proceed, Mr. Oliver.

1502 The Court: Well, there isn't any dispute as to what the record contains, so far as this gentleman's

testimony is concerned relative to the cost of reproduction; is that right?

Mr. Nicodemus: He has never testified.

Mr. Smith: Well, the Commission itself offered these figures. And I think Mr. Lodge will say that what he has here is what is already in the record.

Mr. Nicodemus: The Commission has filed some figures that we contend are entirely erroneous. It is our purpose to establish that fact.

The Court: Well, if that is his purpose, why isn't he entitled to proceed?

Mr. Oliver: If that is his purpose yes; but I did not so understand.

Mr. Nicodemus: Q. Will you now describe the proposed exhibit?

Mr. Burgess: This is offered under what number?

Mr. Nicodemus: Mr. Lodge, it will be Debtor's Court Exhibit 9.

A. The exhibit shows first an estimate of the cost of reproduction new of the roadway property except land owned by the Chicago, Milwaukee, St. Paul and
1503 Pacific and by the Chicago, Terre Haute & Southeastern as of June 30, 1935. The estimate was made up of the units of property as existed on December 31, 1932, with the application of prices as of June 30th, 1935.

Following is a statement showing the sum of additions and betterments less retirements between December 31, 1932, and June 30th, 1935. These figures are shown separately for the Chicago, Milwaukee, St. Paul and Pacific and the Chicago, Terre Haute and Southeastern.

Next is shown the amount of rail and track material owned by the Chicago, Milwaukee, St. Paul and Pacific and leased to industries and used for the most part in logging operations.

The total of the three items is $665,329,251. That is my estimate of the cost of reproduction new of all road property except land owned by the Milwaukee and the Terre Haute as of June 30th, 1935.

Q. What was the starting point for the figure of $665,-529,251 that you have just mentioned?

A. I first obtained from the Bureau of Valuation of the Interstate Commerce Commission its statement of
1504 units of property as of December 31, 1932 priced at average prices prevailing in the years 1910, to 1914.

To these I applied appropriate equation factors taken from a document entitled "Railroad Construction Indices" which were compiled by the Engineering section of the Bureau of Valuation of the Commission.

The additions and betterments less retirements between December 31, 1932, and June 30, 1935, are the amounts reported in the Debtor's annual reports to the Interstate Commerce Commission for the two-and-a-half-year period, adjusted by including expenditures and retirements which were included in the annual reports to the Interstate Commerce Commission, prior to January 1st, 1933, but not reported to the Bureau of Valuation of the Commission until a later date and therefore not included in its units as of December 31, 1932.

The amount opposite "Rail and Track Material Leased" is the amount upon which the lessees pay rental.

Q. Will you please explain the method of determining the figures under the heading "Land?"

A. The figures for land,—for value of land as of December 31, 1935, are taken from a report by the Bureau of Valuation of the Commission on elements of value of the Debtor's property, which is a part of the record made by the Interstate Commerce Commission in the hearings before that Commission. I brought these figures to June 30th, 1935, by adjusting them for the change in investment in land as reported to the Interstate Commerce Commission for the six months between June 30, 1935, and December 31, 1935.

1505

Q. Will you explain how the figures under the heading "Equipment" were estimated?

A. For equipment that was included in the primary valuations of the Commission as of June 30th, 1908, and June 30th, 1916, respectively; the June 30th, 1908, date being that of the Milwaukee and the June 30th, 1916, date being that of the Terre Haute. Such of that equipment as was still in service on June 30th, 1935, I started with the cost of reproduction new as stated by the Bureau of Valuation of the Commission in its engineering reports which underlie its final valuations. To these figures I applied appropriate equation factors taken from the document entitled "Railroad Construction Indices" previously mentioned.

1506

For equipment acquired subsequent to the date of the primary valuations I applied estimated cost of reproduction priced as of June 30th, 1935. These prices were

estimated by equipment builders at the request of our purchasing department.

I depreciated the cost of reproduction under the estimates for both the equipment acquired prior to the date of the primary valuations and that acquired subsequent to those dates at appropriate rates, so that the figure of $106,361,541 shown opposite "Total Equipment" as of June 30th, 1935, is the estimated cost of reproduction less depreciation of all equipment in service as of that date.

Q. What is the source of the figure $10,190,636 shown under the heading "Materials and Supplies"?

A. That is the cost of the materials and supplies owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad as of June 30th, 1935.

Q. What does the figure $861,677,370 shown at the bottom of the sheet represent?

A. That is the total cost of reproduction plus value of land for all property owned by the Chicago, Milwaukee, St. Paul and Pacific and Chicago, Terre Haute and
1507 Southeastern as of June 30th, 1935.

Q. Now, have you another exhibit, and will you describe that exhibit?

Mr. Nicodemus: This next exhibit I may say is partly in the record but I would like to introduce it now for purposes of comparison with the exhibit preceding. The 19-A valuation.

A. This exhibit entitled "Valuation" is the valuation of the property owned and used for common carrier purposes as of June 30th, 1935, of the lines of railroad comprising the Milwaukee system made in accordance with my understanding of the findings of the Interstate Commerce Commission in Finance Docket 3908, which was entitled "Excess Income of St. Louis & O'Fallon Railway Company."

Q. Your understanding of the method used in the St. Louis & O'Fallon case is explained in the first paragraph of this exhibit; is it not?

A. Yes; it is.

Mr. Clay: When you say "this exhibit" what exhibit are you referring to?

Mr. Nicodemus: Q. As I understand, is that the 19-A valuation?

1508 A. I think that was the 15-A. It was the recapture valuation.

Q. It is the same figure that is reported in the Commission's report, is it not, in this case?

A. Yes.

Mr. Clay: We have not got the exhibit you are now referring to.

Mr. Nicodemus: I think it is being distributed.

Mr. Smith: This, your Honor, is identical with Exhibit 76 before the Commission, I believe.

Mr. Nicodemus: I explained that. That is true except that the exhibit before the Commission purported to make allocations I think of mortgage liens. I wanted to avoid that.

Mr. Smith: It is a duplication of the first part.

Mr. Nicodemus: It is a duplication of the first part, but I simply introduce it for convenient reference and comparison with the preceding exhibit and the ones that follow.

Q. Have you prepared a third exhibit? The third exhibit is described as "Amounts Representing Certain Elements of Value, as of December 31, 1935, of property owned as reported by the Bureau of Valuation of the
1509 Interstate Commerce Commission compared with Estimates of the Amounts Representing the Same Elements Prepared by the Valuation Engineer for the Trustees of the Property." Will you explain that exhibit and will you distribute it?

A. The first column of figures was taken from the report on elements of value of the Debtor's property which was mentioned in connection with the first exhibit that I introduced and which was filed in this proceeding by direction of the Interstate Commerce Commission.

The first figure in the column headed "As Estimated by Valuation Engineer for Trustees" opposite "Cost of Reproduction New" is the cost of reproduction new as found by the Interstate Commerce Commission in its primary valuation as of June 30, 1918, plus the net change in investment between that date and December 31, 1935.

The next figure, $581,978,114, opposite "Cost of Reproduction less Depreciation" is determined by adding to the cost of reproduction less depreciation as found by the Interstate Commerce Commission in its primary valuation the net increase in investment in property as deter-
1510 mined from the Debtor's returns to Valuation Order No. 3, depreciated to the same per cent that cost of reproduction less depreciation was of cost of reproduction

new in the final valuations, except for property added between June 30th, 1914, and June 30th, 1918, the actual cost less depreciation was substituted for the Commission's cost of reproduction less depreciation.

The figure of $90,398,497 opposite "Value of Lands and Rights" is the market value of land as of June 30th, 1918, as determined by the Bureau of Valuation of the Interstate Commerce Commission plus the net change in investment in land between that date and December 31, 1935.

The figure of $14,619,198 opposite "Working Capital" is the amount allowed by the Interstate Commerce Commission for working capital in the Debtor's final valuation as of June 30th, 1918.

Q. How were the figures for the GTH&SE prepared?

A. In the same way as the figures for the Milwaukee above, as I have just described.

Q. Have you prepared a fourth exhibit entitled "Amounts Representing Certain Elements of Value, as of December 31, 1935, of Property Owned as Re-
1511 ported by the Bureau of Valuation of the Interstate Commerce Commission Adjusted to June 30, 1935, Compared with Estimates of the Amounts Representing the Same Elements Prepared by the Valuation Engineer for the Trustees of the Property?"

A. I have.

Q. Will you state what this represents?

A. This is similar to the last exhibit introduced except that the comparative figures are as of June 30th, 1935, instead of December 31, 1935. My estimates in the last column were determined in the same manner as described for the last exhibit.

Q. That is, you restated the same figures as of July 1, 1935, which is the Debtor's basic date, according to its contentions?

A. Yes.

The figures in the column headed "As Reported by Bureau of Valuation Adjusted to June 30, 1935" are the figures reported by the Bureau of Valuation as of December 31, 1935, as contained in the previous exhibit, from which has been deducted or added, as appropriate, the change in investment reported to the Interstate Commerce Commis-
sion by the Debtor for the six months period June
1512 30, 1935, to December 31, 1935.

Q. Will you now, Mr. Lodge, sum up for the rec-

ord the final totals of each of the exhibits that you have described?

A. The total of the first exhibit is $861,677,370; and of the second $728,446,507.

The sum of my estimates for cost of reproduction less depreciation, value of lands and rights and working capital on the third exhibit is $709,321,163; while the sum of the same items reported by the Bureau of Valuation is $653,007,696.

On the fourth exhibit, the sum of my estimates for cost of reproduction less depreciation plus value of lands and rights, plus working capital is $708,452,418. While the sum of the amounts reported by the Bureau of Valuation adjusted to June 30, 1935, for the same elements is $652,355,660.

1513 Q. The highest aggregate figure as shown by the exhibits is that which is shown by the first exhibit, and that figure is $861,677,370. Will you please state the principal factor that accounts for the great difference between this and the next highest figure, which is $728,446,507 as shown by the second exhibit, and representing the Commission's 19-A or 15-A valuation on the combined properties adjusted to July 1, 1935? My calculations which I made hurriedly indicate that the difference between the two figures is $133,230,863, which is large enough alone to take care of all our preferred stock and still give a fair cut to the common. Will you explain this big difference between your figures and the Commission's figures?

A. The difference is that both road property, except land, and equipment has been depreciated in arriving at the figure of $728,446,507, while in the first exhibit I depreciated equipment but did not depreciate road property.

Q. Referring to the two exhibits in which elements of value as reported by the Interstate Commerce Commission, one as of December 31, 1935 and the other adjusted to June 30, 1935, are set in columns paralleling the same elements of value as estimated by you, will you state

1514 which of these estimates is in your opinion the correct one, explaining in your own way the reasons therefor?

A. I think the ones shown in the last column, that is my estimates, are the correct ones. The reason is that they are based on my understanding of the findings of the Commission in the St. Louis & O'Fallon case, and it is

the only case within my knowledge where you can determine how the Commission arrived at values.

Q. You are familiar with the Commission's "Railroad Construction Indices" showing price trends, are you not?

A. Yes.

Q. My impression is that there was a question to be asked here as to whether the figures as of June 30, 1935, are greater or less than they would be as of the present day, in all these exhibits. In other words, hasn't the trend been upward consistently since June 30, 1935?

A. Yes, the trend has been up and there have been additions to the property.

The Court: The trend of what has been up?

The Witness: The trend of railroad construction prices from these indices.

Mr. Nicodemus: Q. If we were to produce the
1515 property today it would cost more than it would if produced five years ago. That is what I had in mind.

A. Yes.

Q. Then the production costs as of today would be greater than on the basic day, June 30, 1935?

A. Yes.

Q. So regardless of additions and betterments the property should be more valuable today than it was then.

Mr. Oliver: Well, he said reproduction costs.

Mr. Nicodemus: Well, reproduction costs. Reproduction value—

Mr. Oliver: They are two different things.

The Witness: Reproduction costs would be greater today by about three per cent in the case of roadway items and about eleven per cent in the case of equipment.

Mr. Nicodemus: Q. Whether road property should be depreciated is a controversial question, is it not?

A. Yes, it is.

Q. Can you state briefly the arguments made in favor of the depreciation of the road accounts and the arguments contra?

The Court: I thought you said road property.

Mr. Nicodemus: It is the same thing.

The Court: Are they the same thing? You men-
1516 tioned road property once.

Mr. Oliver: Road accounts include buildings and all structures. Road property, as a loose term, refers only to track structures.

Mr. Nicodemus: Well, the question I asked was with regard to road property. I did not know there was a vital difference. The question of whether road property should be depreciated is controversial, is it not?

A. Yes.

Q. Will you state the claims pro and con very briefly?

A. The usual argument in favor of depreciation of road property is that a part of its capacity for service has been used up. In this conception of depreciation the capacity for future service of various items, such as rail, ties, fence posts, and so forth, is considered separately and the capacity to serve of the property as a whole is not considered. The arguments against such depreciation are that as long as the property is adequately maintained, its capacity to serve is equal to, if not greater than a newly constructed railroad with rails, ties, and fence posts, and so forth, entirely new. In other words, in the absence of deferred maintenance there is no depreciation.

Q. Is it not a fact that the Interstate Commerce
1517 Commission has always insisted upon such depreciation and the carriers have resisted it?

A. The Commission has always insisted upon it and to the best of my knowledge the carriers have always resisted it.

Q. You were working for the Debtor company in 1928, were you not?

A. Yes.

Q. In the report for that year to the Debtor's stockholders President Scandrett stated that the company had earned 4.17 per cent of the Interstate Commerce Commissions's tentative final valuation plus the net additions and betterments, less retirements, since valuation date but complained that the company regarded the tentative final valuation as inadequately low. Can you say whether the company's chief grievance was not due to the heavy deductions made by the Commission for depreciation?

Mr. Hoffman: I object to that on the ground that the witness has not been qualified to answer this particular question as to what the views of the management may have been in that regard.

The Court: Why isn't that objection good? You
1518 are asking this man for his opinion on some statement contained in a report made several years ago.

Mr. Nicodemus: Q. You were in the Bureau of Valuation at that time, were you not?

A. I was in the employ of the Milwaukee Railroad in the Maintenance Department.

Q. And you were generally familiar with the valuation problems.

A. Yes.

Q. And you regarded the Commission's final tentative valuation as inadequately low, did you not?

A. Yes, I did.

Q. And was that due in a large measure to the straight line depreciation?

A. It was due in a large measure to deduction for depreciation.

Q. That is all on that point.

The Court: Are you through with your examination?

Mr. Nicodemus: No, I have some more questions but on another matter.

Q. Can you state whether, if the two exhibits last mentioned, were adjusted to 1939 prices, the estimates would be higher or lower?

A. They would be higher.

1519 Q. They would be higher for what reason?

A. Because of the increase in price trends as shown by the Interstate Commerce Commission's railroad construction indices. I have those only through 1939 and they would be higher in 1939 than in 1935.

Q. Can you state with reasonable certainty that the Debtor's properties are more valuable today than they were on July 1, 1935, if valued in accordance with the principles applied by the Interstate Commerce Commission?

Mr. Clay: I object to that question. The witness is not qualified to speak on the question of value. He has merely testified as to certain elements of value, reproduction cost, reproduction cost less depreciation. You have not qualified him as an expert on commercial value, which is a test of value for reorganization purposes.

Mr. Nicodemus: The question was, in accordance with the principles applied by the Interstate Commerce Commission so far as they may be known.

Mr. Clay: The witness has testified that there is only one decision on which he has been able to figure out what the principles are, or what the Commission applies, in determining a valuation for rate making. I repeat

1520 the objection.

Mr. Nicodemus: I add that the witness has been

in the valuation branches of the engineering department of the railroad for over twenty years, and I think he is qualified to answer that question as an expert. I think he has already answered it.

The Court: Well, if he has answered it, then I will sustain the objection.

Mr. Nicodemus: I will ask it in connection with one of the earlier exhibits.

We offer the four documents in evidence.

The Court: If there is no objection they may be admitted.

Mr. Oliver: May I ask that the ruling on the admission of the documents into evidence be deferred until after cross-examination?

The Court: Yes. No one made any objection.

Mr. Hoffman: I should like to make an objection, your Honor, if I may on the ground that they are incompetent and no proper foundation has been laid for them.

The Court: The ruling will be withheld until the cross-examination has been concluded.

Cross-Examination by Mr. Oliver.

1521 Q. May I ask you to refer first to your Exhibit No. 11?

A. Is that the first one? I haven't the numbers.

The Court: I do not think he ever got to the point where they were numbered. I think they were numbered 1, 2, 3, and 4.

Mr. Nicodemus: They were numbered as they went in.

The Court: They were numbered as they went in? I do not think the witness ever got the number of them. Did you, Mr. Witness?

The Witness: No, I did not. I have got them now.

The Court: You refer to them as the first, second, third, and fourth. Let us get them numbered now so we will know what this is all about, or you will have your record twisted here. You have four exhibits, have you, Mr. Lodge?

The Witness: Yes, I have.

The Court: See that the reporter gets them.

Mr. Nicodemus: He has the four exhibits and they are consecutively numbered from 9 to 12.

The Witness: I think you have them in the wrong order there.

(Mr. Nicodemus handed documents to the witness.)

The Court: All right. Now, are we ready?

1522 Mr. Oliver: Yes, sir.

The Court: All right, go ahead with the cross-examination.

Mr. Oliver: Q. Did counsel ask you to—

A. Just a minute. The same exhibit appears here twice and it is numbered both 9 and 10, the reporter's copy.

The Court: One exhibit has two numbers on it. Strike it out, will you?

Mr. Nicodemus: The exhibits are in proper order now, your Honor.

The Court: Go ahead.

Mr. Oliver: Q. Please refer to your Exhibit No. 11. Did counsel indicate the form in which he wanted this exhibit prepared?

A. Yes. He asked me to prepare an exhibit comparing my estimates with the estimates of the Bureau of Valuation.

Q. Did he specify the particular elements of value to include in your exhibit?

A. No, he did not.

Q. Did he ask you to prepare some estimate as to the value of the property based on its earning capacity?

A. No.

Q. Now, Mr. Lodge, those figures in the exhibit

1523 under the heading, "As Reported by Bureau of Valuation" are already in the record.

A. Yes, that's true.

Q. Do those figures appearing as estimates of yours, are they in the record at the present time?

A. No.

Q. Didn't the debtor prepare and introduce for the record similar statistics as to cost of reproduction new and the various other elements at the hearing before the Commission?

A. I think not, not that I remember.

Q. The Debtor did not prepare any cost of reproduction figures at all?

A. Not to my knowledge.

Q. Have you read a brief filed by the Debtor dated December 30, 1938, in which the Debtor discusses these very valuation figures of the Commission and contends that they are far too low?

A. No; I have not read it.

Q. In that brief reference is made to the final figure mentioned by you of $653,007,696 as being the sum of the Commission's elements of value therein enumerated and the claim was made that those figures were far too low as representing the correct statement of those par-
1524 ticular elements on value. You are not familiar with the brief?

A. No, I am not.

Mr. Oliver: If your Honor please, this particular brief referred to is the brief dated December 30, 1938, filed on behalf of the Debtor, in which it excepts to the proposed report of the examiner. That brief has been transmitted to this Court, I understand, and it is before you. Substantially the same argument was made there as is being made here, that the Commission's various elements of value shown on Exhibit 11 were too low.

Q. Now, in your Exhibit 12, the only difference I believe is that you have attempted to adjust the December 31, 1935 figures to June 30, 1935.

A. That is the only difference.

Q. The reason being that the Commission reports those elements of value as of December 31st of each year. That is true, isn't it?

A. Well, I do not know that they do, but they did make a report as of December 31, 1935.

Q. Yes. Well, it is customary, is it not, to make those reports dealing with adjustments and costs of repro-
1525 duction as of the last day of the year? That is the customary practice of the Commission, isn't it?

A. In recent years, yes.

Q. Yes. So there is nothing new in your Exhibit 12 except that you have adjusted the December 31st figures over what the Commission already had before it?

A. Yes.

Q. Now, as to Exhibit 9, I am not quite certain but I understood you to say that your principal adjustment in case of cost of reproduction now was to adjust the December 31, 1935 figures to June 30, 1935. Is that correct?

A. Not in connection with Exhibit 9. There are no adjustments there except for additions and betterments.

Q. Yes. Well, what you have done is to take in substantially the Commission's figures in connection with your cost of reproduction now of the roadway property. Is that correct?

A. Yes, that is true.

Q. You have taken the units and you have taken the Commission's prices and you have applied those prices to the units on that date and you have gotten what the Commission already has in the record in substance.

1526 A. No, not quite.

Q. Well, what is the difference?

A. What I did was to take the Commission's unit prices as of 1910 to 1914 and then I applied appropriate indices to bring it up to 1932.

Q. Yes, but you applied the Commission's own indices.

A. Yes.

Q. So what you have done is to take the material in the record in the other form in substance. That is, substantially what it means, presented in a little different fashion. Is that not true, Mr. Lodge?

A. No, I would not say that is true.

Q. All right.

A. I do not think so.

Q. At any rate, you have adopted the Commission's units of property and you have adopted the Commission's basic figures, and you have adopted the Commission's trend indices to bring the costs up to date, and you have adopted all of the Commission's factors, so the results should be substantially the same as those put in by the Commission. Is that true?

A. Well, I say it is true that I have adopted their
1527 1910 to 1914 prices, and I have adopted their 1932 units, and I have adopted their indices.

Q. Yes. Well, in fact, you have adopted all the elements which make up the cost of reproduction new.

A. Not entirely. The additions and betterments are from our—

Q. Pardon me, I will come to that, if I may.

A. Yes.

Q. Now, the item of additions and betterments in your cost of reproduction new were adjusted somewhat, I believe.

A. Yes.

Q. That adjustment only amounts to how much?

A. Well, I do not have with me the figure that I used in adjusting the additions and betterments as reported to the Commission.

Q. Well, there is involved only a little over five million dollars in the aggregate in so far as the additions and betterments are concerned.

A. That is true, and it is deducted.

Q. There is an adjustment in the total item of five million dollars. That is all that is involved in that difference.

A. That is all.

1528 Q. All right. Now, as to your land, you have first your values as of December 31, 1935 both for carrier land and for non-carrier land. Did you in that case use the Commission's units? Was there any difference between those used here and the units used by the Commission, I mean the quantities, acreage, square feet and other units?

A. They are the Commission's figures.

Q. You have adopted the Commission's figures.

A. Yes.

Q. Have you adopted the Commission's prices?

A. Yes, the price in its entirety is the Commission's figure.

Q. So you have, in so far as your land is concerned, the same figure which now appears before the Commission.

A. As of December 31, 1939, yes.

Q. But you found it necessary, than, for the present purposes, to adjust that to the June 30, 1935 date?

A. That is correct.

Q. And that is the only difference between the figures you now present and those that are already in the record with reference to land values?

A. That is true.

Q. Now, as to the equipment. Have you likewise 1529 adopted the Commission's figures as to equipment?

A. Only in the case of equipment that was in the primary valuation, that is, that which was in existence as of June 30, 1918 or 1916. The primary valuation dates are still in existence as of June 30, 1935.

Q. Is there any difference between this figure of $106,361,541 and the figure determined by the Commission as representing cost of reproduction less depreciation?

A. Yes.

Q. What is the difference?

A. I do not know exactly. I do not have that report, but the other figure is in the record.

Q. Well, I am trying to find out where the difference comes in. Is it merely an unsubstantial difference due merely to adjustments or is there a substantial difference?

A. I have in mind that the Commission's figure was ninety-two million odd dollars, but I am not sure. However,

the difference is not due to adjustments but it is my own estimate and not the Commission's estimate.

Q. I see. Now, I observe here that you have not set out on your Exhibit 10 anything for depreciation of your roadway property.

A. Yes. The roadway property is depreciated.

1530 Q. I mean Exhibit 9. I am sorry.

A. No. Not on Exhibit 9.

Q. Have you not abandoned lines in the last four and a half years that were in existence on June 30, 1935?

A. Yes.

Q. Substantial mileage has been abandoned, has it not?

A. I do not know how substantial it is. I do not remember.

Q. Well, a substantial number of structures on existing properties have also been retired or dismantled, have they not?

A. I do not know how substantial they are. There are retirements.

Q. Yes. Even in the case of those units which have been since abandoned there is included here their full reproduction cost new.

A. They are included here in the same way that existing property is.

Q. Why did you depart from this method in the preparation of your Exhibit 11 where you use cost of reproduction less depreciation?

A. Exhibit 11 is an entirely different thing. Exhibit 11 is a breakdown of the O'Fallon valuation as shown on

1531 Exhibit 10, broken down into its elements.

Q. Yes.

A. And the Commission in the O'Fallon case depreciated road property.

Q. Which in your opinion is the proper method, Exhibit 11 or Exhibit 9?

A. I am not prepared to testify on value. There are so many differences of opinion on that that I do not want to commit myself.

Q. Neither are you prepared to testify as to the propriety of deducting depreciation or not deducting it in arriving at value, are you, other than to point out the arguments pro and con?

A. No, I will not testify.

Q. All right, sir. What you have merely done is to pre-

pare at the request of counsel the cost of reproduction new, eliminating any reference to cost of reproduction less depreciation and you have presented it for such information and for such help as it could give.

A. Of road property but not of equipment, yes.

Q. Now, counsel has made reference to the fact that the Commission's methods of depreciating roadway property have been contested and opposed throughout all these proceedings by most of the carriers. Hasn't the Com-
1532 mission issued an accounting order in which it will require at such time as the order will become effective the setting up of depreciation on roadway property in somewhat the same manner as depreciation of equipment?

A. There was an order issued. I am not sure of its status now, whether it is held in abeyance or has been put into effect, but there was such an order issued.

Q. When we speak of roadway property we mean—you mean all elements of physical property used by a railroad in its operation other than equipment and other than land.

A. Yes, that is what I mean.

Q. It includes the buildings, it includes bridges, it includes track property elements, signal property, and all other elements exclusive of the equipment.

A. And land.

Q. That is all, thank you, sir.

Cross-Examination by Mr. Clay.

Q. Mr. Lodge, you will turn to your Exhibit 9. Is it not true that since the date shown on this exhibit, June 30, 1935, there has been a substantial abandonment of carrier property?

A. There have been abandonments. There are
1533 abandonments almost continuously. I do not know how substantial they are. I do not have the record before me.

Q. Well, I want to have you explain just what the practice is in your department of the railroad. Let us assume that the Commission authorizes an abandonment. Is it not true that you do not write down any of the properties to be abandoned out of this reproduction cost until the Commission has authorized the abandonment?

A. That is true, because we do not abandon it until after the Commission has authorized it.

Q. Exactly. Take, for example, a branch line which is worth five million dollars to reproduce. It is not earning anything on the investment say for ten years. Yet is it not true that following the principles which you have followed in the preparation of Exhibit 9, you would show that at the full reproduction cost until you had obtained authority from the Commission to abandon it?

A. Yes. If there is any line included in the cost of reproduction new of road property that has since been abandoned but had not been abandoned at that time, then it is included at the full amount.

Q. You haven't with you readily at hand a figure for the reproduction cost of the branches and other prop-
1534 erties which have been abandoned since June 30, 1935, have you?

A. No, I do not have it.

Q. Can you tell me roughly, I am not asking you for an exact answer, how much this figure of 861 million dollars as shown on your Exhibit 9 is represented by the value of the Puget Sound extension, the reproduction value, the line west of Mobridge?

A. No, I cannot.

Q. Would you say it was 200 million?

A. I do not know. I do not want to hazard a guess.

Q. Would you say it was nearer 200 million or nearer 400 million?

A. I know it is not 400 million.

Q. Is it nearer 200 million than 400 million?

A. I don't know.

Q. Is it less than 200?

A. I don't know.

Q. In your work you have never had a chance to ascertain roughly what the figure is?

A. Not what part of this total figure it is, no, I have not.

Q. Well, have you compiled this figure of cost of repro-
duction new? Didn't you tie it down to some partic-
1535 ular property?

A. All of the property owned.

Q. Well, did you consider whether it was built through the balance of the Rocky Mountains?

A. No.

Q. Well, tell me how you arrived at this cost.

A. I secured from the Bureau of Valuation of the Interstate Commerce Commission its units of property as of December 31, 1932, priced at 1910 to 1914 prices.

Q. I see.

A. Then I applied these indices that I have referred to to bring it up to 1935 and I added the subsequent changes in investment and adjustment that was mentioned in the investment.

Q. In other words, you have not considered at all whether the property led through a territory which did not produce traffic or a territory which did produce traffic.

A. No, I merely adopted some Commission figures and worked from them as a base.

Q. The cost would be the same as if the property were laid through the Sahara Desert, would it not, if it were shown to have been built through the Sahara Desert, and you used the figures you obtained from the I. C. C.?

1536 A. It would all depend on the opinion of the engineers of the I. C. C., because I adopted their figures.

Q. Now, you say you adopted the figures of an engineer of the I. C. C. You do not mean the I. C. C. figures; you mean they were merely figures of an employe of the I. C. C.?

A. No, I mean the figures of the Bureau of Valuation of the Interstate Commerce Commission.

Q. Well, is the Bureau's valuation to be identified with the Interstate Commerce Commission? Isn't it merely a division of the Commission, under the Commissioners?

A. It is a bureau of the Commission.

Q. Exactly. By "the Commission" we mean the eleven commissioners, do we not?

A. (No response.)

Q. You testified you were familiar with the Commission's methods. Isn't it true that the Bureau is just an employed section of the Commission?

A. I do not know the relationship between the Bureau and the Commissioners.

Q. Well, you do know, do you not,—

The Court: Listen, counsel, doesn't the statute provide that under certain circumstances the Commission 1537 may authorize the Bureau to do certain things and when they are done they are the official action of the I. C. C.?

Mr. Oliver: That is just the point, your Honor.

The Court: Well, why ask all these questions of this man? He is not a valuation expert, as I understand it, and not an I. C. C. man.

Isn't that right, Mr. Lodge?

The Witness: Yes.

Mr. Oliver: I wanted to bring out the point that only the Commission, under the practice, determines valuation.

The Court: That is the law. But, this Bureau can report to the Commission.

Mr. Oliver: Exactly. Well, I will shorten my question by asking this:

Q. Has the Commission fixed a value for rate making as of any date subsequent to 1918?

A. Not of my knowledge.

Q. And in any of the Commission's figures which you have given as a basis of Exhibit 9, have you given any consideration to what might be called functional obsolescence?

1538 A. No.

Q. Neither of roadway or equipment?

A. Well, I think that is one element of depreciation that I might say is considered in depreciating equipment.

Q. You have given no consideration to it in connection with the roadway, then?

A. No.

Q. Am I to understand from your statement that your statement that your accounts do not have two separate accounts, one for depreciation and one for obsolescence?

A. I do not understand that question.

Q. I will restate it to save time. In your opinion, is depreciation the same thing as obsolescence?

A. (No response.)

Q. It is not, is it?

A. A thing may be depreciated due to obsolescence, but they are not the same thing.

Q. Depreciation is an accounting matter, isn't it?

A. Not necessarily.

The Court: What is the difference between depreciation and obsolescence? Is there a difference?

The Witness: I think there is. I think the unit of property may be in 100 per cent physical condition but it

1539 may be obsolete.

The Court: All right.

Mr. Oliver: That is all that I have to ask.

The Court: Are there any further questions of this witness?

Mr. Hoffman: May I ask a question, sir?

The Court: Yes, go ahead.

Cross-Examination by Mr. Hoffman.

Q. In relation to your Exhibit 9, Mr. Lodge, does the figures of 861 million dollars represent your value as to the actual value of the St. Paul Road?

A. No.

Q. Picking up Exhibit 9, being the first of the exhibits that you have prepared, you have, "Cost of Reproduction New (Units as of December 31, 1932—Prices as of June 30, 1935)," how many individual units went into that valuation?

A. I don't know.

Q. You do not know?

A. I do not.

Q. Approximately how many individual units went into that valuation?

A. I would not hazard a guess.

1540 Q. How many did you inspect?

A. I do not know.

Q. Did ou inspect any?

A. Well, that is a difficult question to answer. I have been in the employ of the railroad for a good many years and I have been out over the property and I have seen a great deal of it.

Q. Yes. Well, did you examine the records with respect to these particular units?

A. What records?

Q. The records showing the number and character of the units, which you have valued here.

A. Well, I reported the units to the Commission. I furnished the Commission a report of those units in connection with valuation order No. 3.

Q. You had working papers when you made this report, is that correct?

A. Yes.

Q. How many items, how many units, went into making up this report?

A. I do not know.

Q. How old is the oldest of the units which went into making up the report?

A. I do not know.

1541 Q. Could you give us an approximate idea?

A. No.

Q. How old is the newest? Would you know that?

A. No.

Q. You cannot give us an approximate idea as to the newest?

A. Well, I would say one day old.

Q. Now, has this schedule or exhibit taken into account the repairs as distinguished from abandonments?

A. It has taken into consideration both repairs and abandonments.

Q. Prior to the date of December 31, 1935?

A. June 30, 1935.

Q. June 30th. Now, as of June 30, 1935, some of the units were necessarily of considerable age, would you not say?

A. That is a fair assumption.

Q. And would you also say that in respect to the operation of this railroad some of the units might not be reproduced if you had it to do over again?

A. I do not know.

Q. Would you say that each and every of the units that went into making up this exhibit was a useful unit on that date in the running of a railroad?

1542 A. To the best of my knowledge they were.

Q. Do you know what the first retirement of any of these units was after June 30, 1935?

A. No.

Q. Do you know when the first abandonment was after June 30, 1935?

A. No; but it is a matter of record. Those things can be determined.

Q. Would you know, for instance, that some parts of this road are very old? Some of the structures on the way are very old. Is that correct?

A. They are quite old, yes, some of them.

Q. Some of them.

A. Yes.

Q. Now, would you say that the old structure as it existed on June 30, 1935, was of the same value to the road as the reproduction cost of that structure new on the same day?

A. I am not going to testify on the value. I do not know whether it was or not.

Q. You do not believe this Exhibit 9 in any sense represents a real valuation of the road, is that correct?

A. It represents just what it purports to repre-

1543 sent and what it states to represent in the last item.

Mr. Hoffman: If the Court please, may I ask for

a categorical answer, because this is preliminary to a motion to strike the exhibit. The witness cannot support the exhibit and I ask that your Honor direct the witness to answer the question.

The Court: What is the question?

(The question was read.)

The Court: What is the answer?

The Witness: I do not know whether it does or not.

Mr. Hoffman: I move to strike the exhibit numbered 9 on the basis of the last question and answer.

Mr. Clay: I join in the motion.

The Court: Which exhibit is that?

Mr. Hoffman: This is the first exhibit. The one prepared takes no account of depreciation, obsolescence, or of the various other items that counsel referred to.

The Court: He states it is just a cost of reproduction.

The Witness: That is right.

The Court: That is all the gentleman pretends it to be.

The Witness: Correct.

The Court: The motion is overruled. As I understand it, that has been your testimony right along. You

1544 are not testifying as to value but you are testifying as to cost of reproduction.

The Witness: That is right.

Mr. Hoffman: Q. Now, necessarily your Exhibit 9 gave no effect to the earning power of the various elements of value contained therein, is that correct?

A. That is correct.

Q. So that if one portion of the road cost very much to reproduce and earned little, and another portion of the road cost very little to reproduce and earned much, there would be no reflection of that in your Exhibit 9, is that correct?

A. None.

Mr. Hoffman: That is all.

Mr. Clay: May I ask just one question?

The Court: Yes.

Cross-Examination by Mr. Clay.

Q. I understood you to say, Mr. Lodge, on your direct examination that the property was more valuable today than it was in 1935. You meant, of course, that it would cost more to reproduce in 1939, did you, than it would in 1935?

A. Yes, I think that is correct.

Q. You qualify your testimony in that respect?

1545 The Court: I understand that is all he has testified to.

Mr. Clay: I may be incorrect. I just wanted to be sure.

The Court: No, I think that came up. The question was, does it cost more now to reproduce than in 1935. Is that right, Mr. Lodge?

The Witness: That is what I understood him to say.

Mr. Nicodemus: That is correct.

As I say, the purpose of these exhibits is merely to show the fact that this whole amount of depreciation has been deducted by the Commission and it will give us a chance to argue this matter of law. I think we are entitled to put this evidence in.

The Court: Is there any further questioning?

(No response.)

The Court: You may step down, Mr. Witness. These last four exhibits may be received in evidence.

Mr. Nicodemus: I reintroduce them.

The Court: They are received.

(Whereupon the said documents so received in evidence by the Court were marked DEBTOR'S EXHIBITS 9, 10, 11, and 12, and are in words and figures as follows, to-wit:)

1546 The Court: How long will your next witness take?

Mr. Nicodemus: I think about an hour, your Honor.

The Court: This may be a good time to adjourn.

Mr. Whitlock: Before we adjourn I wish to state to the Court that Mr. Severs has asked me to advise the Court that he is now in possession of the answer to the question propounded by Mr. Hoffman.

The Court: All right, Mr. Hoffman, here is the answer. Step up, Mr. Severs, so you can answer the question.

J. W. SEVERS, a witness heretofore called, sworn and examined on behalf of the Debtor herein, resumed the stand for further examination and testified as follows:

The Witness: Mr. Hoffman asked about the maturity interest authorized for payment as of a certain date, and I will give it as of July 1, 1940, on the Milwaukee and Northern, first, of the consolidated mortgages.

Mr. Hoffman: I asked the witness for the aggregate of all the items.

The Witness: Oh, I beg your pardon, I thought you were interested in the Milwaukee and Northern. I will give it to you anyway. The answer is $93,265,583.
1547 That is inclusive of the contingent interest on the adjustment mortgage bonds.

Cross-Examination by Mr. Hoffman (Resumed).

Q. So that if your chart had been prepared on the basis of carrying into the chart the unpaid accrued interest on the same day as of which the chart was prepared, the figure of $14,387,427 would have become a minus of approximately 79 million dollars, is that right?

A. Yes.

Q. By the chart, I refer to Exhibit 6.

A. I understand.

The Court: Is that the answer you want?

Mr. Hoffman: Yes.

Mr. Moses: Is that date July 1, 1940?

The Witness: Yes, sir.

The Court: Is that all, Mr. Moses?

Mr. Moses: Yes.

The Court: We will recess until tomorrow morning at ten o'clock.

(Whereupon the further hearing of this cause was adjourned until the 5th day of September, 1940, at 10:00 o'clock A. M.)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of volume III of the printed record, which together with volumes I, II, IV and V constitutes the printed record, printed under my supervision and filed on the sixth day of June, 1941, in the following entitled causes:

Cause Nos. 7590, 7610 through 7617.

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, Debtor,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of January, A. D. 1942.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*